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OFFICIAL GOVERNMENT OF GOA GAZETTE

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INDEX

Department	Notification/Order/Bill	Subject	Pages
1. Goa Legislature Secretariat	Bill.- LA/LEGN/2012/1273	The Goa Succession, Special Notaries and Inventory Proceeding Bill, 2012.	933
b. —do—	Bill.- LA/LEGN/2012/1274	The Goa Administrative Tribunal (Amend.) Bill, 2012	1016
c. —do—	Bill.- LA/LEGN/2012/1275	The City of Panaji Corporation (Amend.) Bill, 2012.	1018
d. —do—	Bill.- LA/LEGN/2012/1284	The Goa Tax on Luxuries (Twelfth Amend.) Bill, 2012.	1018
e. —do—	Bill.- LA/LEGN/2012/1285	The Goa Commission for Minorities Bill, 2012.	1023
f. —do—	Bill.- LA/LEGN/2012/1286	The Goa Electricity Duty (Amendment) Bill, 2012.	1029
g. —do—	Bill.- LA/LEGN/2012/1301	The Goa Human Resource Development Bill, 2012.	1031
h. —do—	Bill.- LA/LEGN/2012/1302	The Indian Stamp (Goa Amendment) Bill, 2012.	1041
i. —do—	Bill.- LA/LEGN/2012/1303	The Goa Value Added Tax (Sixth Amend.) Bill, 2012.	1043
j. —do—	Bill.- LA/LEGN/2012/1304	The Goa Municipalities (Amendment) Bill, 2012.	1050
k. —do—	Bill.- LA/LEGN/2012/1329	The Goa (Rajiv Gandhi IT Habitat—Cancellation/ Abolition and Regulation of Allotment of Plots) Bill, 2012.	1051
l. —do—	Bill.- LA/LEGN/2012/1330	The Goa Highways (Amendment) Bill, 2012.	1057
m. —do—	Bill.- LA/LEGN/2012/1331	The Goa Public Gambling (Amendment) Bill, 2012.	1060
n. —do—	Bill.- LA/LEGN/2012/1332	The Goa Nursing Council Bill, 2012.	1064
o. —do—	Bill.- LA/LEGN/2012/1338	The Goa Salary, Allowances and Pension of Members of the Legislative Assembly (Fourth Amendment) Bill, 2012.	1083
p. —do—	Bill.- LA/LEGN/2012/1339	The Goa Salaries and Allowances of Ministers (Amendment) Bill, 2012.	1087
q. —do—	Bill.- LA/LEGN/2012/1340	The Goa Land Use (Regulation) (Amend.) Bill, 2012.	1089
2. a. Law & Judiciary	Ord.- 13/1/2012-LD(Estt).	Creation of posts.— District and Sessions Court, North Goa, Panaji.	1091
Law (Est.) Division			
Under Secretary			
b. —do—	Ord.- 13/1/2012-LD(Estt).	Creation of posts.— District and Sessions Court, South Goa, Margao.	1092
3. Personnel	Not.- 1/49/76-PER (Pt.II)	Amendment to the Recruitment Rules for Group 'C' and 'D' posts in various Departments.	1092
Additional Secretary			
4. Sports & Youth Affairs	Not.- 2/07/(829)/11/DSYA/	Creation of posts.	1093
Dte. of Sports & Youth Affairs	/Adm/2176		
Director			
5. Women & Child Devp.	Not.- 2/279/LL/2012/DW&	Amendment to the Laadli Laxmi Scheme.	1093
Dir. & ex officio Jt. Secy.	CD/2969		

Goa Legislature Secretariat

LA/LEGN/2012/1273

The following bill which was introduced in the Legislative Assembly of the State of Goa on 1st August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and

Conduct of Business of the Goa Legislative Assembly.

INDEX

PART I

General Provisions

- Section 1. Short title, extent, commencement and application.
Section 2. Definitions.

PART II

Succession

CHAPTER I

Preliminary Provisions

- Section 3. Succession.
 Section 4. Types of Succession.
 Section 5. Types of successors: heirs and legatees.
 Section 6. Inheritance.
 Section 7. Simultaneous death of the estate leaver and the successor.

CHAPTER II

Opening of the Inheritance, Competence to Succeed and Transmission of Ownership and Possession

- Section 8. Opening of the succession.
 Section 9. Competence to succeed.
 Section 10. Incompetence to succeed by reason of unworthiness to succeed.
 Section 11. Consequences of declaration of unworthiness to succeed.
 Section 12. Re-acquisition of competence to succeed.
 Section 13. When the ownership and possession is transmitted.

CHAPTER III

Right to Partition the Inheritance

- Section 14. Partition by inventory.
 Section 15. Partition by deed.
 Section 16. Inheritance is indivisible till partition is effected.
 Section 17. Consequence of transfer of specific asset of inheritance.
 Section 18. Right of co-heir to claim the inheritance in its entirety.
 Section 19. Right to demand partition.
 Section 20. Partition of assets of joint family.

CHAPTER IV

Acceptance and Renunciation of the Inheritance

- Section 21. Acceptance of inheritance.
 Section 22. Devolution of inheritance under different titles.
 Section 23. Freedom to accept or renounce.
 Section 24. Nullity of restricted acceptance or renunciation.
 Section 25. Capacity to accept or renounce.
 Section 26. Acceptance or renunciation by one of the spouses only.
 Section 27. Acceptance of inheritance left to a person under disability.
 Section 28. Acceptance or renunciation of inheritance left to a deaf and dumb person.

- Section 29. Form of acceptance.
 Section 30. Gratuitous transfer of inheritance or share therein.
 Section 31. Consequences of court decision declaring a person to be an heir.
 Section 32. Absence of consensus among heirs to accept or renounce an inheritance.
 Section 33. Transmission of right to accept.
 Section 34. Indivisibility of renunciation.
 Section 35. How renunciation is effected.
 Section 36. Consequences of renunciation.
 Section 37. Implications of renunciation of disposable share.
 Section 38. When acceptance may be challenged.
 Section 39. Subrogation by creditor.
 Section 40. Prohibition to renounce.
 Section 41. Retroactivity of acceptance or renunciation.
 Section 42. Inheritance at abeyance.
 Section 43. Temporary management.
 Section 44. Notice to accept or renounce the inheritance.

CHAPTER V

Liabilities of the Inheritance

- Section 45. Liabilities of the inheritance.
 Section 46. Order of priorities.
 Section 47. Liability of the usufructuary.
 Section 48. Legacy of maintenance or lifetime pension.
 Section 49. Rights and duties of the heirs in respect of the inheritance.
 Section 50. Bonafide satisfaction of the legacies.

CHAPTER VI

Legal Succession

- Section 51. When legal succession takes place and its extent.
 Section 52. Order of legal succession.
 Section 53. Proximity of degree.
 Section 54. Succession per capita.
 Section 55. Accretion upon renunciation of the inheritance.
 Section 56. Degree and lines of kinship.
 Section 57. Direct and collateral line.
 Section 58. Types of direct line of kinship.
 Section 59. How degrees are counted in the direct line.
 Section 60. How degrees are counted in the collateral line.

Section 61. Incapacity to inherit by legal succession.

Section 62. Extent of incapacity.

CHAPTER VII

Right of Representation

Section 63. Right of representation.

Section 64. Representation in the direct line.

Section 65. Representation in the collateral line.

Section 66. Right of the representatives.

Section 67. Joint representatives.

CHAPTER VIII

Order of Succession

Succession of Descendants/Ascendants

Section 68. Succession of children and their descendants.

Section 69. When filiation is disputed.

Section 70. Succession per capita.

Section 71. Succession per stirpes.

Succession of Ascendants

Section 72. Succession of parents.

Succession of Ascendants of the Second Degree

Section 73. Succession of grandparents and other ascendants.

Section 74. Division per capita: Ascendants in the same degree.

Section 75. When ascendants are not in the same degree.

Succession of Brothers, Sisters and their Descendants

Section 76. Succession of brothers, sisters and their descendants.

Succession of Surviving Spouse and of the Collaterals

Section 77. Succession of surviving spouse.

Section 78. Collaterals other than brothers, sisters and their descendants.

Succession of the State

Section 79. Succession of the State.

Section 80. Rights and duties of the State.

Section 81. Prior Court order.

CHAPTER IX

Preferential right of the Spouse

Section 82. Preferential right of habitation and use of surviving spouse.

CHAPTER X

Mandatory Succession, Collation and Reduction

Section 83. Disposable portion.

Section 84. Restriction on transfer by parents or grandparents.

Section 85. Disposition of specific usufruct or lifetime pension.

Section 86. In officious dispositions.

Section 87. Right of forced heir to claim reduction.

Section 88. Renunciation of right to claim reduction.

Section 89. Computation of disposable portion.

Rules Relating to Collation

Section 90. Collation.

Section 91. Exemption from collation.

Section 92. When is a gift deemed an advancement of the legitimate.

Section 93. Collation by grandchildren.

Section 94. When parents are not bound to collate.

Section 95. Ascendant duty to collate.

Section 96. Spouses of children not bound to collate.

Section 97. Expenses to be collated.

Section 98. Collation of fruits and profits of gifted things.

Section 99. How collation is done.

Section 100. Where the value of the gifted assets exceeds the value of donee's share in the inheritance.

Section 101. On payments made.

Section 102. Family arrangement.

Section 103. Gift of community assets.

Section 104. How the shares of co-heirs are to be paid.

Section 105. When the value of the assets gifted exceeds the legitimate of the donee.

Section 106. Where there are several donees.

Section 107. Dispute as regards obligation to collate.

Section 108. Assets which devolve in a preferential manner.

Section 109. Duty to collate is a charge in rem.

Rules for Reduction of a Legacy or Gift

Section 110. Reduction of legacy or gift.

Section 111. Order of reduction.

Section 112. Partial reduction.
 Section 113. Reduction of gifts inter vivos.
 Section 114. Pro rata reduction.
 Section 115. Reduction in respect of movables.
 Section 116. Reduction of gifts of immovables.
 Section 117. When immovable cannot be divided.
 Section 118. When the donee may retain the gifted property.
 Section 119. When immovable properties are not in possession of the donee.
 Section 120. When the donee is insolvent.
 Section 121. Fruits and profits in the event of reduction.

CHAPTER XI

Testamentary Succession

Section 122. Institution of heir.
 Section 123. Liability of the heirs.
 Section 124. Liability of the legatee.
 Section 125. Apportionment of liabilities where inheritance is distributed by way of legacies only.
 Section 126. Specific sum or thing bequeathed.
 Section 127. Institution of heirs collectively.
 Section 128. Brothers or sisters generally instituted as heirs.
 Section 129. Institution of certain person and his children.
 Section 130. Right to be compensated for management of inheritance distributed by way of legacies.
 Section 131. Legacy of a thing subsequently acquired.
 Section 132. Legacy of a thing belonging to the heir or legatee.
 Section 133. Legacy of a thing which belongs only in part to the testator or to his successors.
 Section 134. Restraint on marriage.
 Section 135. Condition to reciprocate.
 Section 136. Deferred execution of the disposition.
 Section 137. Ineffective dispositions.
 Section 138. Legacy in the alternative.
 Section 139. Indivisibility of the disposition.
 Section 140. Supervenience of descendants.
 Section 141. Effect of supervenient children predeceasing.
 Section 142. Legacy of a pledged thing.
 Section 143. Legacy of thing ascertainable at the place where found.
 Section 144. Legacy of debt not fallen due.
 Section 145. Legacy made to the creditor of testator.
 Section 146. Unconditional legacy.
 Section 147. Choice of legacy of a generic thing.
 Section 148. Heir's right to select.
 Section 149. Transmission of right to choose.
 Section 150. Legacy for maintenance.
 Section 151. Legacy of house with things existing in it.
 Section 152. Legacy of usufruct.
 Section 153. Legacy to minor.
 Section 154. Legacy for charitable purposes.
 Section 155. Mistake as to object or subject of the legacy.
 Section 156. Delivery of legacy.
 Section 157. Duty to carry out the will.
 Section 158. Fruits and income of legacy.
 Section 159. Legacy of periodic sums.
 Section 160. Expenses for delivery of legacy.
 Section 161. Manner and place of delivery.
 Section 162. New acquisitions.
 Section 163. Legacy of thing burdened with encumbrance in rem.
 Section 164. Lien on immovable assets.
 Section 165. Duty of co-heirs to compensate when the legacy consists of an asset of one co-heir only.
 Section 166. Institution of heir or legatee subject to fulfillment of condition.
 Section 167. Conditional legatee.
 Section 168. Responsibility of the heir apparent.
 Section 169. Reduction of encumbrance attached to legacy.

Right of Accretion

Section 170. Right of accretion.
 Section 171. Exclusion of right of accretion.
 Section 172. Effects of accretion.
 Section 173. Renunciation of right of accretion.
 Section 174. Right to legacy.

Substitutions

Section 175. Common or direct substitution.
 Section 176. Pupillary substitution.
 Section 177. Quasi pupillary substitution.
 Section 178. Properties which may be subject to substitution.
 Section 179. Rights and duties of the substitute.
 Section 180. Reciprocal substitution.
 Section 181. Fide commissary substitution.
 Section 182. Lapse of *fidei-commissum*.
 Section 183. Nullity of the substitution.
 Section 184. Dispositions which are not analogous to *fidei-commissum*.

- Section 185. Deemed *fidei-commissum*.
 Section 186. Encumbrances in favour of paupers, etc.
 Section 187. Irregular *fidei-commissum*.
 Section 188. Applicability to past and future *fidei-commissum*.

Disinheritance

- Section 189. Disinheritance.
 Section 190. Grounds for disinheritance.
 Section 191. Effects of disinheritance.
 Section 192. Burden of proof.
 Section 193. Failure to mention ground or irrelevant ground.
 Section 194. Right to maintenance of the disinherited heir.
 Section 195. Period of limitation to challenge disinheritance.

CHAPTER XII

Wills

- Section 196. Concept of will.
 Section 197. Will is a personal act.
 Section 198. Will dependent upon instruction.
 Section 199. Disposition in favour of unnamed relatives.
 Section 200. Conditional disposition.
 Section 201. Obstruction to fulfillment of condition.
 Section 202. Reason contrary to law.
 Section 203. Disposition where time for commencement or cessation of heirship is fixed.
 Section 204. Will obtained by coercion, undue influence, deceit or fraud.
 Section 205. Duty of authorities.
 Section 206. When expressions are insufficient.
 Section 207. Prohibition imposed by testator to challenge his will.
 Section 208. Joint wills.
 Section 209. Revocation of will.
 Section 210. Implied revocation.
 Section 211. Effect of will which has lapsed.
 Section 212. Restoration of will.
 Section 213. When testamentary dispositions lapse.
 Section 214. Effect of ignorance of existence of children.
 Section 215. Interpretation of wills.
 Section 216. Objects contrary to law, morality or public policy.

Who may make a Will and Acquire by Will

- Section 217. Capacity to make a will.
 Section 218. Incapacity to make a will.
 Section 219. Restrictions on disposition of community assets.
 Section 220. Restrictions on disposing of specific assets of the inheritance.
 Section 221. Relative incapacity of sick person.
 Section 222. Disposition in favour of a person who has rendered domestic help or care and assistance.
 Section 223. Relative incapacity – Disposition in favour of guardian or manager of assets.
 Section 224. Relative incapacity – Disposition by adulterous spouse.
 Section 225. Relative incapacity – Disposition in favour of the Special Notary.
 Section 226. Extent of nullity.
 Section 227. Restriction on impairment of mandatory share.
 Section 228. Who may receive by will.
 Section 229. Relevant time to determine capacity to acquire by will.
 Section 230. Consequence of incompetence to acquire by legal succession.
 Section 231. Consequences of refusal to act as executor or guardian or their removal.
 Section 232. Capacity of corporate bodies.
 Section 233. Fictitious disposition.

Types of Wills

- Section 234. Types of wills.
 Section 235. Public will.
 Section 236. Printed open will.
 Section 237. Closed or sealed will.
 Section 238. Incompetence to make a closed will.
 Section 239. Failure to present the closed will.
 Section 240. Fraudulent removal of will.
 Section 241. Where the closed will is found open.
 Section 242. Tampered or torn will.
 Section 243. Presumption as to who is responsible.
 Section 244. Torn will found amidst the effects of the testator.
 Section 245. Wills under this Act to become operative upon death.
 Section 246. Wills made outside Goa.

CHAPTER XIII

Management of the Inheritance:
Head of the Family

- Section 247. To whom the office of head of the family belongs.
- Section 248. When the guardian is appointed head of the family.
- Section 249. Eldest of the spouses to be the head of the family.
- Section 250. Special head of the family.
- Section 251. Duty to initiate the inventory.
- Section 252. When half of the income may be distributed.
- Section 253. Rights and duties of the head of the family.
- Section 254. Head of the family when there are only legacies.
- Section 255. When the head of the family seeks exemption or is removed.
- Section 256. Concealment of assets of the inheritance by the head of the family or heir.
- Section 257. Fraudulent description.
- Section 258. Fraudulent concealment of documents.

Executor

- Section 259. Executor appointed by the testator.
- Section 260. Who may be executor.
- Section 261. Appointment of executor by Court.
- Section 262. Where the executor declines to accept the office.
- Section 263. Time limit to decline appointment.
- Section 264. When the executor may resign.
- Section 265. Office of the executor is gratuitous.
- Section 266. Impediments to become executor.
- Section 267. Powers of the executor.
- Section 268. General duties of the executor.
- Section 269. Duty to initiate inventory.
- Section 270. When the testator leaves forced heirs.
- Section 271. Where the testator does not leave forced heirs.
- Section 272. Time limit to carry out the will.
- Section 273. Joint executors.
- Section 274. Duty to render accounts.
- Section 275. Office of executor not transferable or heritable.
- Section 276. Accretion of remuneration.
- Section 277. Expenses of the executor.
- Section 278. When the executor is guilty of deceit or fraud.

CHAPTER XIV

Partition

- Section 279. Effects of partition.
- Section 280. Consequences of co-heir and moiety holder being deprived of possession.
- Section 281. Limitation for suit for damages.
- Section 282. Partition done out of Court.
- Section 283. Rescission in case of out of Court partition.

CHAPTER XV

Supplemental Provisions

- Section 284. Sale of share in undivided inheritance: right of pre-emption.
- Section 285. Notice to moiety holder or co-heirs.
- Section 286. Sham sale.
- Section 287. Creation of Easement.
- Section 288. Definition of usufruct.
- Section 289. Constitution of usufruct.
- Section 290. Extinguishment of usufruct.
- Section 291. Right of the usufructuary.
- Section 292. Determination of usufruct.
- Section 293. Emphyteusis.
- Section 294. Divisibility of the emphyteusis.
- Section 295. Acts contrary to law.

PART III

Special Notaries

CHAPTER XVI

Establishment of District Special Notaries
and Special Notaries

- Section 296. District and Sub-Districts.
- Section 297. Special Notaries.
- Section 298. Offices of the District Special Notary and the Special Notary.
- Section 299. Absence of District Special Notary.
- Section 300. Absence of the Special Notary.
- Section 301. Seal of the District Special Notary and the Special Notary.
- Section 302. State Special Notary.
- Section 303. Qualifications.

CHAPTER XVII

Functions of the Special Notary

- Section 304. Function of the Special Notary.
- Section 305. Status of the Special Notary.
- Section 306. Evidentiary value of the documents drawn by the Special Notary.
- Section 307. What instruments are to be drawn only by way of authentic document.

CHAPTER XVIII

Books, Indices and Fire Proof Boxes

- Section 308. Obligation of the State to provide books to the Special Notary.
- Section 309. Books to be maintained by the Special Notary and District Special Notary.
- Section 310. Requirement of the notarial books.
- Section 311. Indexes to be maintained.
- Section 312. Maintenance and preservation of books and other records.
- Section 313. Special Notaries to allow inspection of indices and give certified copies.
- Section 314. Power of the State Special Notary and District Special Notary to superintend and control the Special Notaries.

CHAPTER XIX

Powers of the District Special Notary and the Special Notary

- Section 315. Powers of the Special Notaries.
- Section 316. Power to administer oath.
- Section 317. Incompetence to act.
- Section 318. Duty of the Special Notary.
- Section 319. When the Special Notary shall refuse to perform the act.
- Section 320. Refusal to perform an act.
- Section 321. Order of the District Special Notary.
- Section 322. Suit in case of party being aggrieved by order of the District Special Notary.

CHAPTER XX

Authentic Instrument in General

- Section 323. Who may be witnesses, identifiers and certifiers.
- Section 324. Requisites of authentic documents.
- Section 325. How instruments are to be recorded.
- Section 326. Dumb and deaf.

CHAPTER XXI

Public Open Will

- Section 327. Identification of the testator and his condition.
- Section 328. Place, time and date of the will.
- Section 329. When a plan is attached to the will.
- Section 330. When the testator does not know or is unable to write.
- Section 331. When the testator is deaf.
- Section 332. Formalities to be complied with without break.

CHAPTER XXII

Printed Open Will

- Section 333. Printed open will.

CHAPTER XXIII

Closed Will

- Section 334. Presentation of closed will and approval by the Special Notary.
- Section 335. Record of the approval of the closed will.
- Section 336. Failure to comply with formalities.
- Section 337. Delivery of the closed will.
- Section 338. Custody of the closed will and its deposit with the Special Notary.
- Section 339. Who may deposit the will.
- Section 340. Special power of attorney for return of the will.

CHAPTER XXIV

Opening of the Closed Will

- Section 341. Formalities to open a closed will.
- Section 342. Proceedings on death of the depositor.
- Section 343. Book of record.

CHAPTER XXV

Registration of the Closed Will after Opening

- Section 344. Registration of will.
- Section 345. Withdrawal of sealed cover deposited under the preceding section.

CHAPTER XXVI

Instrument of Declaration of Heirship

- Section 346. Declaration of heirship.

CHAPTER XXVII

Void Notarial Acts

- Section 347. Notarial acts when void.

CHAPTER XXVIII

Validation of Notarial Acts

- Section 348. Validation of notarial acts.

CHAPTER XXIX

Civil Liability of the Special Notary

- Section 349. Liability to disciplinary proceedings.
 Section 350. Insufficiency of stamps.
 Section 351. Discretion to state the provision and accept a draft.

CHAPTER XXX

Certified Copies

- Section 352. Who may apply.
 Section 353. To whom certified copy may be delivered.
 Section 354. Time limit to issue certified copies.
 Section 355. When a reference is made to other documents in the main instrument.
 Section 356. When a reference is made to a drawing or plan in the main instrument.
 Section 357. Manner in which certified copy is to be issued.
 Section 358. When there are interlineations, erasures and corrections.

CHAPTER XXXI

Fees

- Section 359. Fees to be fixed by the State Government.
 Section 360. Publication of fees.

CHAPTER XXXII

Penalties

- Section 361. Penalty for incorrectly recording, endorsing, copying and translating documents with intent to injure.
 Section 362. Penalties for making false statements, delivering false copies or translations, false peromation and abetment.
 Section 363. Thing bona fide done or refused in his official capacity by an officer acting under this Act.
 Section 364. Nothing so done is invalidated by defect in appointment or procedure of appointment of an officer acting under this Act.

CHAPTER XXXIII

Miscellaneous

- Section 365. Ex-officio powers and acts to be done after office hours.

PART IV

Inventory Proceeding

CHAPTER XXXIV

Types of Inventory Proceedings

- Section 366. Mandatory Inventory.
 Section 367. Optional Inventory.
 Section 368. Inventory upon divorce or separation or annulment of marriage.
 Section 369. Inventory where a party dies after allotment in inventory proceeding which were finally disposed of.
 Section 370. Inventory upon death of the surviving spouse.
 Section 371. Additional partition.
 Section 372. Inventory in the event of dissolution of joint family.

CHAPTER XXXV

Jurisdiction

- Section 373. Jurisdiction.
 Section 374. Consolidation of inventories.

CHAPTER XXXVI

Head of the Family

- Section 375. Petition.
 Section 376. Order of appointment of head of the family.
 Section 377. Inquiry for appointment of head of the family.
 Section 378. Evidentiary value of the declaration of the head of the Family.
 Section 379. Rights and Duties of the head of the family.
 Section 380. Concealment of assets by head of the family.
 Section 381. Consequences of concealment.
 Section 382. Consequence of giving a list of assets based on false documents.
 Section 383. Duration of office of head of the family.
 Section 384. Removal of the head of the family.
 Section 385. Discharge of the head of the family from holding office.

CHAPTER XXXVII

Hearing

- Section 386. Hearing in the inventory proceeding.
 Section 387. Prosecution of inventory.
 Section 388. Proceeding in absentia.
 Section 389. Parties under disability.

Section 390. Discharge of guardian, etc.
 Section 391. Discharge or removal of guardian, etc.
 Section 392. Composition of the family council .
 Section 393. Death of moiety holder or heir during the pendency of the proceeding.
 Section 394. Challenge to the maintainability of the proceeding and other objections.
 Section 395. Application to be declared as interested party, legatee or creditor and to be made a party to the proceeding.
 Section 396. Intended sale of a share in an undivided inheritance.
 Section 397. Sale of share in the undivided inheritance.
 Section 398. Order of priority and procedure.

CHAPTER XXXVIII

Initial list of Assets

Section 399. Initial list of assets.
 Section 400. Objections to the list of assets and other objections.
 Section 401. When co-heirs are called upon to give a list of assets.
 Section 402. Deletion of assets listed in the preliminary list.
 Section 403. Disputes relating to concealment of assets.

CHAPTER XXXIX

Liabilities of the Inheritance

Section 404. Payment of debts of inheritance.
 Section 405. Funeral expenses.
 Section 406. Redemption of certain encumbrances in rem.
 Section 407. Creditor's claim.
 Section 408. Debtor's denial.
 Section 409. Valuation.
 Section 410. Evaluation by officer of the Court.

CHAPTER XL

Final List, Conference of the Parties and Payment of Debts

Section 411. Final list.
 Section 412. Division by metes and bounds.
 Section 413. Objection to overvaluation, conference, application for licitation.
 Section 414. Who may decide on behalf of persons under disability.
 Section 415. Conference of the interested parties.
 Section 416. Debts payable by the inheritance and mode of payment.

Section 417. Power of the Court to decide on debts.
 Section 418. Disagreement on the approval of debts.
 Section 419. Payment of debts fallen due.
 Section 420. When debts are approved by some of the interested parties only.
 Section 421. Resolution on mode of payment of debts.
 Section 422. When do legatees decide on the mode of payment of debts.
 Section 423. Insolvency.
 Section 424. Emphyteusis.
 Section 425. Overvaluation of assets.

CHAPTER XLI

Licitation

Section 426. Licitation of asset which is not susceptible to division without detriment.
 Section 427. Licitation of gifted assets.
 Section 428. Licitation of bequeathed assets.
 Section 429. When licitation is to be held.
 Section 430. Licitation defined.
 Section 431. When licitation may be annulled.

CHAPTER XLII

Second Valuation

Section 432. Second Valuation.
 Section 433. Inofficious legacy.
 Section 434. Procedure for second valuation.
 Section 435. Proposal on mode of partition should be made.
 Section 436. Procedure for filling up the shares of the parties.

CHAPTER XLIII

Chart of Partition

Section 437. Chart of partition.
 Section 438. Preliminary Chart.
 Section 439. Rectification.
 Section 440. Sortition.
 Section 441. Second and Third chart of partition.

CHAPTER XLIV

Confirmation of Partition

Section 442. Confirmation of partition.

Section 443. Costs.

Section 444. Safeguards to be observed when the assets are delivered before the order of homologation becomes final.

Section 445. Fresh partition.

CHAPTER XLV

Amendment and Rescission of Partition

Section 446. Amendment of partition.

Section 447. Suit for amendment of partition.

Section 448. Rescission of partition.

Section 449. Settlement of share of the heir left out in the inventory.

Section 450. Finality of the decision.

CHAPTER XLVI

Appeals

Section 451. Appeals.

CHAPTER XLVII

Preventive Measures

Section 452. Appointment of receiver.

Section 453. Temporary injunction.

CHAPTER XLVIII

Miscellaneous

Section 454. Cause title.

Section 455. Stamp duty payable.

Section 456. Fixation of the amount of costs.

Section 457. Enforcement of order.

Section 458. Summary proceeding.

Section 459. Power to make Rules.

Section 460. Repeal and Savings.

The Goa Succession, Special Notaries and Inventory Proceeding Bill, 2012

(Bill No. 13 of 2012)

A

BILL

to consolidate and amend the law of intestate and testamentary succession, notarial law and the laws relating to partition of an inheritance and matters connected therewith.

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

PART I

General Provisions

1. *Short title, extent, commencement and application.*— (1) This Act may be called the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

(2) It shall extend to the whole of the State of Goa.

(3) It shall come into force on the 90th day from the date of its publication in the Official Gazette.

(4) It shall be applicable to,—

(a) all persons who, prior to the 20th day of December, 1961, were governed by the provisions of the Civil Code of 1867 as in force in erstwhile Portuguese regime over Goa and which continued in force by virtue of sub-section (1) of section 5 of the Goa, Daman and Diu (Administration) Act, 1962 (1 of 1962), as adapted by the Military Governor of Goa, Daman and Diu vide Order No. 175/2/MG dated 31st May, 1962;

(b) any person born in Goa of parents who are governed by the provisions of the Civil Code of 1867 which is at present in force in Goa and which was in force prior to the 20th day of December, 1961;

(c) any person born outside the State of Goa of parents who were or are governed by the provisions of the said Civil Code of 1867, unless such person declares that he does not desire to be governed by the provisions of this Act at any time before the expiry of three years from the date he attains majority or before the expiry of three years from the date he comes from outside the State of Goa, before the Special Notary having office in the sub-district where such person resides;

(d) any person born in Goa of parents who are governed by the provisions of the corresponding laws in force in the rest of India provided that he chooses permanent residence in the State of Goa and he declares before the expiry of three years from the date he attains majority that he desires to be governed by this Act before the Special Notary having office in the sub-district where such person resides;

(e) any person born in Goa of parents who are foreign citizens provided such person satisfies the requirements of sections 3 and 4 of the Citizenship Act, 1955 (Central Act 57 of 1955);

(f) any person born in Goa of unknown parents or of unknown nationality;

(g) any person adopted by parents who are governed by the provisions of the Civil Code of 1867 as in force in Goa or by parents to whom this Act is applicable:

Provided that such a person shall not be deemed to have taken up permanent residence in Goa,—

(i) merely by reason his residing there on account of his being appointed in the Civil, Military, Naval, Air Force service of the Government of India;

(ii) merely on account of he being appointed by the Government of a foreign country as its representative and residing as such in Goa in pursuance of such

appointment nor shall any other person residing with such representative as part of his family or as servant.

2. *Definitions.*— In this Act, unless the context otherwise requires,—

(a) “absent person” means a person who, without appointing an attorney to manage his properties, has left the place of his residence and his whereabouts are not known and is so adjudged by a competent court;

(b) “assets” means properties, movable or immovable, corporeal, whether animate or inanimate, or incorporeal, unless repugnant to the context and includes liabilities;

(c) “authentic document” means a document drawn by a public official or with his intervention as required by law and such document constitutes proof of the veracity of the acts done by the public official and the veracity of the facts which have occurred in his presence or which he has certified and was competent to certify, unless it is proved that the document itself is fabricated or false;

(d) “conferee” means the person, who has to return the assets gifted to him to the mass of the inheritance for the purpose of collation;

(e) “deaf and dumb” means a person who is deaf and dumb and is not capable of managing his assets and is so adjudged by a competent court;

(f) “estate leaver” means the person upon whose death the transmission of his estate takes place;

(g) “forced heir” means the heir whom the estate leaver cannot deprive of the portion of his estate reserved to such heir by law, except in cases where the law permits the estate leaver to disinherit him;

(h) “head of the family” means the person who is entrusted with the duty to give the list of the assets and liabilities of an inheritance and with the management of the inheritance till the finalization of the partition;

(i) “inofficious gift or will” means a gift or a will made by the estate leaver which impairs the legitime of the forced heir;

(j) “interdict” means a person who is declared to be incompetent to manage his assets by an order of the court;

(k) “inventory proceeding” means a proceeding to partition the inheritance of a deceased person or to obtain a formal order of allotment of inheritance by the court;

(l) “legal or intestate succession” means the succession which takes place by operation of law;

(m) “liabilities” include all debts, obligations, burdens and encumbrances;

(n) “matrimonial regime” means a system of rules which govern the ownership and management of the property of married persons as between themselves and towards third parties;

(o) “moiety holder” means a spouse who has a right to moiety; and right to moiety is the half-share which any of the spouses has to the common assets of the couple or to the community properties;

(p) “personal representative” includes a natural guardian, a guardian appointed by the court and a guardian appointed by parties;

(q) “person under disability” means a person declared by law or by the court as being incapable of managing his assets and includes a minor, insane person, a deaf and dumb and an absent person;

(r) “prescribed” means prescribed by rules;

(s) “prodigal” means a person who is major in age but is a habitual spendthrift or has extravagant habits and is adjudged by a court as being incapable of managing his assets;

(t) “renunciation or repudiation of heirship” means the relinquishment of the inheritance made by a person entitled to inherit by succession and to succeed;

(u) “right of accretion” means the right of the heirs or legatees to add to their shares in the inheritance, the share of any co-heir or legatee;

(v) “right of representation” means the right conferred by law upon certain relatives of a deceased person to succeed to all rights to which such a person would have succeeded, if alive;

(w) “sortition” means the adjudication of the lots or the shares to the interested parties by draw of lots;

(x) “Special head of the family” means the head of the family restricted to certain assets of inheritance, such as the donee who brings the gifted assets into the mass of the inheritance and the co-heirs in lawful possession of certain assets of the inheritance prior to the opening of succession;

(y) “Special Notary” means a Notary with special powers to draw, authentic documents such as (a) wills, (b) record of printed open wills, (c) instruments of consent to the will by the spouse of the testator, (d) instruments of renunciation of inheritance, (e) record of approval of the closed wills, (f) ante nuptial agreements, (g) deeds of declaration of heirship, (h) adoption deeds and (i) such other acts which the Special Notary is authorized to perform by law;

(z) “to make a record” or “to draw a record” means to draw up a written account of an act or a series of acts under authority of law by the Special Notary and designed

to furnish permanent authentic evidence of the matters to which it relates;

(za) “unknown heir” means a heir whose identity is not known.

PART II

SUCCESSION

CHAPTER I

Preliminary Provisions

3. *Succession.*— Succession is the transmission of the estate of a deceased person in favour of his successors. Successor is the person who is called to succeed to the juridical relations of the deceased person and upon whom the assets and liabilities devolve.

4. *Types of Succession.*— (1) Succession may be intestate or legal and testamentary.

(2) Testamentary succession is the succession which results from a will left by the estate leaver and a testamentary heir is a heir instituted by a will. Contractual succession is illegal, except when expressly authorised by law.

(3) Intestate succession is either free or forced. Forced succession is the one which is reserved by law to the forced heirs and places restrictions on the freedom of the estate leaver to dispose of his estate.

5. *Types of successors: Heirs and legatees.*— (1) Heir is the person who inherits or succeeds to the totality of the estate of the estate leaver or to an undefined share thereof, without specifying the assets constituting it, while a legatee is the one who succeeds to specific and determined assets.

(2) A person who succeeds to the remainder of the estate when the assets constituting the remainder are not determined, is a heir.

(3) An usufructuary is a legatee even if he be entitled to the usufruct of the totality of the estate.

(4) The nomenclature used by the testator, if in contravention of the above provisions, shall not change the character of the successor.

6. *Inheritance.*— Inheritance or succession of a deceased person comprises of all the properties, rights and obligations which he leaves upon death. Personal rights which by their very nature or by operation of law, extinguish upon death of the title holder, do not form part of the inheritance.

7. *Simultaneous death of the estate leaver and the successor.*— If the estate leaver and those who succeed him, either by virtue of a will or by operation of law, die simultaneously in the same accident or on the same day and it is not possible to ascertain who died the first, it shall be presumed that all died at the same time and there will be no transmission of the inheritance or the legacy as between them.

CHAPTER II

Opening of the Inheritance, Competence to Succeed and Transmission of Ownership and Possession

8. *Opening of the succession.*— (1) Succession opens upon the death of the estate leaver.

(2) The place where the succession opens shall be determined as follows:—

(a) if the deceased had a permanent residence in the State of Goa, the succession opens at the place of his permanent residence;

(b) if the deceased did not have a permanent residence in the State of Goa, the succession opens where his immovable properties are situated in the State of Goa. If his immovable properties are situated at different places in the State of Goa, the succession opens where the major part of these properties are situated. Such major part is calculated on the basis of the value of the properties. If the immovable properties of the deceased are situated partly in the State of Goa and partly outside the State of Goa but within the country, the succession opens in the State of Goa irrespective of the value of the properties;

(c) the succession of a person, who died outside the State of Goa, and did not have a permanent residence in the State of Goa nor did he own any immovable properties in the State of Goa but has movables in the State of Goa, opens at the place where the major part of the movable assets are located;

(d) Where the deceased did not have a permanent residence nor immovable properties in the State of Goa, the succession opens at the place where he died in the State of Goa.

(3) The succession is universal and, subject to the provisions of section 373, the succession of a deceased person to whom this Act is applicable may be partitioned in Goa, wherever the properties, movable or immoveable, are situated.

9. *Competence to succeed.*— (1) All persons, besides the State, who are born or conceived at the time of the opening of the succession are competent to succeed, unless the law provides otherwise.

(2) In case of testamentary or contractual succession, the following are also competent to succeed:—

(a) Those conceived, who are to be born, children of a determined person who is living at the time of the opening of succession;

(b) bodies having juridical personality.

10. *Incompetence to succeed by reason of unworthiness to succeed.*— (1) The following persons shall be unworthy to succeed the estate leaver and are, consequently, incompetent to be his successors:—

(a) A person convicted for the commission of murder of, or attempt to murder, the estate leaver or his spouse, descendant, ascendant, adopter or adoptee;

(b) A person convicted for defamation of the persons specified in the preceding clause or for giving false evidence against the

forementioned persons in relation to an offence punishable with rigorous imprisonment for not less than two years, whatever it's nature;

(c) A person who, by deceit or coercion, induced the estate leaver to make, revoke or modify a will, or obstructed him from doing so;

(d) A person who has fraudulently spirited away, concealed, destroyed or suppressed a will, before or after the death of the estate leaver, or has benefited himself by any of his abovementioned acts.

(2) The conviction mentioned in clauses (a) and (b) of sub-section (1) may be subsequent to the opening of the inheritance but the offence must have been committed before it.

However, when the institution of an heir or the appointment of a legatee is subject to a condition precedent, the offence committed before the condition is fulfilled, shall be relevant till the condition is fulfilled and shall have the same consequences.

(3) Upon conviction as provided in clause (a) or (b) of sub-section (1) becoming final, the person so convicted shall be unworthy of succeeding to the estate leaver.

(4) The suit for a declaration that the person is unworthy of succeeding to the estate leaver may be filed within 1 year from the date of knowledge of the cause of unworthiness laid down in clauses (c) and (d) of sub-section (1).

11. *Consequence of declaration of unworthiness to succeed.*— (1) Once a person is declared as unworthy to succeed by a Court or is unworthy of succeeding as provided in sub-section (1) of section 10, the inheritance is deemed not to have devolved on him, and such person shall, for all purposes be considered a person in mala fide possession of the assets.

(2) In case of legal succession, the incompetence contemplated in sub-section (1)

above does not affect the right of representation of his descendants.

12. *Re-acquisition of competence to succeed.*— (1) A person unworthy to succeed re-acquires competence to succeed if the estate leaver expressly rehabilitates him by a will or a deed drawn before a Special Notary.

(2) Where the testator does not expressly rehabilitate such person, but the testator benefits him in the will when he was fully aware that he had given cause to be unworthy to succeed, the person may inherit within the parameters of the testamentary disposition.

13. *When the ownership and possession is transmitted.*— The ownership and possession of the inheritance is transmitted to the heirs, whether testamentary or intestate, the moment the estate leaver dies.

CHAPTER III

Right to Partition the Inheritance

14. *Partition by inventory.*— An inheritance may be partitioned by a mandatory inventory or optional inventory as provided in sections 366 and 367 respectively.

15. *Partition by deed.*— Where the heirs are of full age and none of them is under disability or is absent, they may, by consent, partition the inheritance by executing a deed of partition under the Registration Act, 1908 (Central Act 16 of 1908), provided such deed of partition is preceded by a deed of declaration of heirship.

16. *Inheritance is indivisible till partition is effected.*— Where more than one person has a claim to the inheritance, their rights shall be indivisible both in respect of ownership and possession, till the partition is effected.

17. *Consequences of transfer of specific asset of inheritance.*— (1) A co-heir is not entitled to dispose of any specific asset of the inheritance or part of such an asset to a stranger until and unless the said asset or part thereof is allotted

to him in the partition. Any such transfer, if made, shall be inoperative and void.

(2) Where, however, a co-heir transfers his undivided right to the inheritance to a stranger, the transfer shall be subject to the right of pre-emption.

18. *Right of co-heir to claim the inheritance in its entirety.*— Any heir may recover the whole of the estate or part thereof in possession of a third party or obtain an injunction against such party under the provisions of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the latter shall be precluded from raising the plea that such estate or part thereof does not solely belong to such co-heir.

19. *Right to demand partition.*— (1) Any of the co-heirs or the moiety holder has a right to demand partition of the inheritance.

(2) No co-heir or moiety holder may renounce the right to demand partition of the inheritance.

(3) However, the parties may agree to keep the inheritance undivided for a certain period not exceeding 5 years.

20. *Partition of assets of joint family.*— The partition of the assets amongst members of a joint family shall take place in accordance with the provisions that govern partition amongst co-heirs.

CHAPTER IV

Acceptance and Renunciation of the Inheritance

21. *Acceptance of inheritance.*— Acceptance of inheritance shall be unconditional.

22. *Devolution of inheritance under different titles.*— The person who renounces the inheritance which devolves on him by one title is not, for that reason, debarred from accepting the inheritance which devolves on him by another title.

23. *Freedom to accept or renounce.*— The acceptance or renunciation of an inheritance is an entirely voluntary and free act.

24. *Nullity of restricted acceptance or renunciation.*— It is not lawful for a person to accept or renounce an inheritance in part, or for a certain time limit or conditionally.

25. *Capacity to accept or renounce.*— Any person who is capable of managing his assets may, lawfully accept or renounce the inheritance.

26. *Acceptance or renunciation by one of the spouses only.*— A married person is not entitled to accept or renounce an inheritance without written consent of the other spouse. The consent may be made good by an order of the Court.

27. *Acceptance of inheritance left to a person under disability.*— The inheritance left to a minor or a person under other disability may be accepted by those who represent him.

28. *Acceptance or renunciation of inheritance left to a deaf and dumb person.*— A deaf and dumb person, who is not under guardianship and who knows to write, may accept or renounce the inheritance, either personally or through a constituted attorney.

29. *Form of acceptance.*— (1) The acceptance of inheritance is express or tacit.

(2) The acceptance is express when in any document the heir accepts the title or quality of heir. The acceptance is tacit, when the heir does some act from which the intention to accept has to be necessarily inferred or the act done is of such a nature that he could not have done it otherwise than as an heir.

(3) However, acts done solely to preserve or to provisionally manage or safeguard the assets of the inheritance do not imply it's acceptance.

30. *Gratuitous transfer of inheritance or share therein.*— A gratuitous transfer of inheritance or share therein in favour of all the co-heirs to whom it would have belonged in the absence of the transfer, shall be deemed to be renunciation of the inheritance.

31. *Consequences of Court decision declaring a person to be an heir.*— A person who has

been declared to be an heir by an order or decree of a Court that has become final or a person against whom a decision has been passed expressly in that quality shall be deemed to be an heir both in relation to the creditors or the legatees who had been parties to the case as also in relation to others.

32. *Absence of consensus among heirs to accept or renounce inheritance.*— Where there is no consensus amongst the heirs as to whether the inheritance should be renounced, some may accept it and others may renounce it.

33. *Transmission of right to accept.*— Where the heir dies without accepting or renouncing the inheritance, the right to accept or renounce shall pass on to his heirs.

34. *Indivisibility of renunciation.*— (1) The heir who has accepted the inheritance of the estate leaver may renounce the inheritance which the estate leaver had not accepted at the time of his death.

(2) Renunciation of the inheritance of the estate leaver shall mean renunciation of all inheritances which would have otherwise devolved on the estate leaver.

35. *How renunciation is effected.*— (1) Renunciation of an inheritance shall be made before the Court having jurisdiction over the place where the succession opens or before any Special Notary.

(2) When made before the Court, it shall be drawn in a book which shall have its pages duly numbered, and initialled by the Court and when made by the Special Notary, it shall be drawn in his respective Book. The deed or record of renunciation by the heir shall be written in indelible black ink in a clear and legible handwriting.

(3) It is the duty of the court to inspect the book once a year and record a certificate of inspection on the page immediately following the last page used. The register shall be

maintained in the chronological order and shall be preserved as a permanent record of the court.

(4) When an heir renounces the inheritance through his attorney, the power of attorney shall be also preserved in a separate file maintained for the purpose and the page at which the power of attorney is placed shall be mentioned at the bottom of the deed. The file shall have an index of the powers of attorney.

(5) Where the renunciation is made through an attorney, the original power of attorney with the specific power to renounce shall be preserved in the court or office of the Special Notary, as the case may be.

36. *Consequences of renunciation.*— (1) Where the person who is called to succeed, renounces the inheritance, he shall be deemed to have never been an heir. There is no right of representation in this case. But the renunciation of the inheritance does not deprive the person who has renounced of the right to receive the legacies which might have been bequeathed to him.

(2) The person called to succeed who is entitled to an inheritance under a will and intestate, and renounces it under the will is presumed to have renounced also the intestate inheritance. But, if he renounces the inheritance as an intestate heir without having knowledge of the will, he may accept the inheritance under the will, notwithstanding the former renunciation.

37. *Implications of renunciation of disposable share.*— A renunciation of the disposable share shall not imply renunciation of the mandatory share, unless it is expressly made.

38. *When acceptance may be challenged.*— (1) No heir who has accepted the inheritance may, thereafter challenge his acceptance unless,—

(a) there was coercion or;

(b) he was induced to accept it by fraud; or

(c) more than half of the inheritance has been bequeathed by will and the existence of the will was not known to the heir at the time of acceptance.

(2) The provisions of sub-section (1)(a) and (1)(b) shall be applicable to renunciation.

39. *Subrogation by creditor.*— Where an heir renounces the inheritance to the detriment of his creditors, the latter may apply to the court for authorising them to accept it in lieu and on behalf of the debtor-heir, but after the creditors are paid, the remainder of the inheritance shall go to the other succeeding heirs and not to the heir who had renounced it.

40. *Prohibition to renounce.*— No person is permitted to renounce, whether in the ante-nuptial agreement or otherwise, the right to any future inheritance or to alienate or create a charge on the rights which he may eventually have to any inheritance.

41. *Retroactivity of acceptance or renunciation.*— Acceptance or renunciation of the inheritance has retrospective effect from the date of the opening of the inheritance.

42. *Inheritance at abeyance.*— The inheritance is at abeyance when the inheritance has neither been accepted nor has it been declared vacant.

43. *Temporary management.*— (1) The person who is called to succeed is not debarred, even if he has not yet accepted or renounced the inheritance, from taking steps to manage the assets when delay may cause injury.

(2) Where several persons are called to succeed, it is lawful for any of them to perform acts of management; but if there is objection from another, the vote of the majority shall prevail.

44. *Notice to accept or renounce the inheritance.*— (1) When a person called to succeed is known and he neither accepts nor renounces the inheritance, the court having jurisdiction over the place of permanent residence of the heir, may, on application from an interested party, cause a notice to be served on him calling upon him to either accept or renounce the inheritance within such reasonable time, not exceeding 60 days, as may be fixed by the Court.

(2) When no statement of acceptance is made nor is any document renouncing the inheritance produced, the inheritance shall be deemed to have been accepted.

(3) If the heir renounces the inheritance, then, without prejudice to the provisions of sub-sections (4) to (6), the next immediate heirs shall be notified and so on, successively, till no person comes forward to claim the inheritance over the estate.

(4) The creditors of the heir who renounces the inheritance may accept it when it is necessary to safeguard and guarantee the rights of the creditors. The creditors who are subject to a condition precedent or to a specified period may exercise such right when there is just apprehension that waiting for the fulfillment of the condition or for the debt to fall due, is likely to cause them prejudice.

(5) Such creditors have to accept the inheritance within six months from the date of knowledge of the renunciation.

(6) The court shall notify the debtor that the creditors have accepted the inheritance. The acceptance by one creditor enures to the benefit of all creditors.

(7) Upon the creditors of the heir who has renounced the inheritance being paid, the remainder shall devolve on the next immediate heirs, and not on such debtor.

CHAPTER V

Liabilities of the Inheritance

45. *Liabilities of the inheritance.*— The liabilities of inheritance shall be satisfied in the following order of priority:—

(1) the funeral and other expenses towards last rites and religious services for the soul of the estate leaver;

(2) to meet the burden of the executorships and management;

(3) towards the payment of the debts of the deceased for the satisfaction of the legacies.

46. *Order of priorities.*— The creditors of the inheritance and the legatees have priority over the personal creditors of the heir and the creditors of the inheritance have priority over the legatees.

47. *Liability of the usufructuary.*— (1) The usufructuary of the entire inheritance of the deceased or of a share thereof may advance the sums required, according to the assets he enjoys, to meet the burdens of the inheritance, but he retains the right to recover from the heirs, at the end of the usufruct the sums advanced.

(2) If the usufructuary does not advance the amounts required, the heirs may demand that such of the assets enjoyed by the usufructuary, as may be necessary, be sold to meet the liability, or they themselves may pay the liability and, in this event, they shall have the right to demand interest from the usufructuary at the rate of 8% per annum.

48. *Legacy of maintenance or lifetime pension.*— (1) The usufructuary of the entire inheritance of the deceased is bound to satisfy fully the legacy for maintenance or lifetime pension annuity or monthly allowance.

(2) Where the usufruct is in respect of a share of the estate, the usufructuary is bound to contribute only in proportion to his share for the satisfaction of the legacy for maintenance or lifetime pension annuity or monthly allowance.

(3) The usufructuary of specified assets is not bound to contribute for the aforementioned

maintenance or lifetime pension annuity if such burden is not imposed on him expressly.

49. *Rights and duties of the heirs in respect of the inheritance.*— (1) The heir shall retain, as against the inheritance, till partition, all the rights and obligations *vis-a-vis* the deceased, with the exception of those that get extinguished upon the death of the latter.

(2) The amount of money which the heir owes to the inheritance is to be set off against his share.

(3) Where it is necessary to adjudicate on the rights and duties of the heir and he is the head of the family, an administrator shall be appointed to manage the inheritance.

50. *Bonafide satisfaction of the legacies.*— If a will is declared null or is annulled after the satisfaction of the legacies made in good faith, the presumptive heir is discharged of his obligation towards the true heir, by handing over the remainder of the inheritance to the true heir, without prejudice to the rights of the latter against the legatees.

CHAPTER VI

Legal Succession

51. *When legal succession takes place and its extent.*— Where any person dies without making a disposition of his assets or making a disposition of only a part thereof or, having made a will, the will is annulled, revoked, reduced or it lapses, his legal heirs shall inherit the assets or the part thereof.

52. *Order of legal succession.*— (1) The legal succession shall devolve in the following order:—

(i) on the descendants;

(ii) on the ascendants, subject to the provisions of sub-section (2) of section 72;

(iii) on the brothers and their descendants;

(iv) on the surviving spouse;

(v) on the collaterals not comprised in clause (iii) upto the 6th degree;

(vi) on the State, provided that, in the absence of testamentary or intestate heir of a beneficial owner or of an emphyteusis, the property shall revert to the direct owner.

(2) In respect of persons referred to in clauses (i), (ii) and (iii) of sub-section (1), the agricultural produce or fruits, gathered or growing, meant and necessary for the maintenance of the couple shall be deemed to be the personal property of the surviving spouse, provided that on the date of the opening of the inheritance there is no suit for divorce or separation of persons and properties, pending or decreed.

53. *Proximity of degree.*— Within each group referred to in section 52, the relative closer in degree shall exclude the more remote, unless the law has conferred on the latter the right of representation.

54. *Succession per capita.*— The relatives who are in the same degree shall inherit per capita or in equal proportion subject to the provisions of section 63.

55. *Accretion upon renunciation of the inheritance.*— Where the nearer relatives renounce the inheritance, or are incapable of succeeding, the said inheritance shall devolve on the relatives of the next degree; but where only some of the co-heirs renounce their shares, such shares shall be added to the shares of the other co-heirs within the same group.

56. *Degree and lines of kinship.*— Each generation constitutes a degree and a series of degrees constitute a line of kinship.

57. *Direct and collateral line.*— The line of kinship is either direct or collateral; the direct line is constituted by a series of degrees

between persons who descend one from the other; the collateral line is constituted by a series of degrees between persons who do not descend one from the other, though they descend from a common progenitor.

58. *Types of direct line of kinship.*— The direct line is either descending or ascending; descending, when it is considered as proceeding from the progenitor to the progeny; ascending when it is considered as proceeding from the progeny to the progenitor.

59. *How degrees are counted in the direct line.*— In the direct line, the degrees are counted by the number of the generations, excluding the progenitor.

60. *How degrees are counted in the collateral line.*— In the collateral line, the degrees are counted by the number of generations, ascending by one of the lines to the progenitor and descending by the other line, without counting the progenitor.

61. *Incapacity to inherit by legal succession.*— The persons incapable of acquiring by will are incompetent to acquire by legal succession.

62. *Extent of Incapacity.*— The incapacity of the heir ceases with him. His children and descendants, if any, succeed as if the person incapable of succeeding had died without any incapacity.

CHAPTER VII

Right to Representation

63. *Right of representation.*— The right of representation arises when the law designates certain relatives of the deceased person who succeed to all the rights to which such person would have succeeded, if alive.

64. *Representation in the direct line.*— The right of representation takes place always in the direct descending line but never in the ascending line.

65. *Representation in the collateral line.*— In the collateral line, the right of representation

takes place in favour of the descendants of the brothers and sisters of the deceased.

66. *Right of the representatives.*— The representatives inherit only what the person represented would have inherited, if alive.

67. *Joint representatives.*— If there be several representatives of the same person, they shall share equally among them what would belong to the person represented, if alive.

CHAPTER VIII

Order of Succession

Succession of Descendants/ /Ascendants

68. *Succession of children and their descendants.*— Children and their descendants succeed to their respective parents and other ascendants, without distinction of sex or age.

69. *When filiation is disputed.*— (1) Where, in a proceeding for partition of an inheritance, the filiation is disputed and it is not proved by documentary evidence, such party will have to institute a suit for declaration.

(2) No proceeding for partition of an inheritance shall be stayed pending the final disposal of such suit.

(3) Where the party succeeds in the suit, he shall, on his application, be impleaded in the inventory proceeding and participate in the proceeding from the stage it has reached or, where the partition in such proceeding has been homologated, he shall have his share settled in money as provided in section 449.

70. *Succession per capita.*— Where all the descendants are of the first degree, they shall succeed per capita and the inheritance shall be divided into as many shares as the number of heirs.

71. *Succession per stirpes.*— Where all or some of the heirs have a claim by virtue of the right of representation, they shall succeed per

stirpes or by forming branches amongst whom the inheritance shall be distributed and sub-divided into branches where there is more than one heir. The rule of equality shall be observed both in the division and in the sub-division.

Succession of Ascendants

72. *Succession of parents.*— (1) Where a person dies without descendants, his father and mother shall succeed to him in equal shares or to the entire inheritance where only one of them is living.

(2) However, if there are full blood brothers or sisters of a predeceased child or descendants of the deceased full blood brothers or sisters of such child, the father or the mother who has married again does not inherit the assets which the predeceased child had inherited from the other progenitor or from his other ascendants but only the usufruct thereof.

(3) Where the parents have acknowledged that they are the parents of a child during the lifetime of the child, and the child dies without issue, the inheritance shall devolve upon his parents or one of them, as the case may be; where, in the circumstances mentioned above, such child dies without issue but leaving a surviving spouse, the surviving spouse shall have the right to usufruct of half of the inheritance.

Succession of Ascendants of the Second Degree

73. *Succession of grandparents and other ascendants.*— In default of parents, the inheritance of the deceased shall devolve on the ascendants of the second degree and in default of ascendants of the second degree, it shall devolve on the ascendants of the next degree, and so on.

74. *Division per capita: Ascendants in the same degree.*— Where the surviving ascendants are of the same degree, the inheritance shall be divided amongst them in equal shares, irrespective of whether they belong to the paternal or maternal line.

75. *When ascendants are not in the same degree.*— Where the ascendants are not in the same degree, the inheritance shall devolve on the nearest one, without distinction of the line.

Succession of Brothers, Sisters and their Descendants

76. *Succession of brothers, sisters and their descendants.*— In default of descendants and ascendants and where the estate leaver has not disposed off his assets, his brothers, sisters and, in a representative capacity, their descendants, shall inherit the assets. However, the surviving spouse shall be the usufructuary of the estate of the deceased spouse irrespective of their matrimonial regime, if at the time of the death of the latter they were not divorced or there was no judicial separation by a decision that had become final.

Succession of Surviving Spouse and of the Collaterals

77. *Succession of surviving spouse.*— In default of descendants, ascendants, brothers, sisters and their descendants, the surviving spouse shall succeed, provided that at the time of the death of the other spouse, they were not divorced or there had been no judicial separation of spouses and assets by a decision which had become final.

78. *Collaterals other than brothers, sisters and their descendants.*— Where the deceased is not survived by any of the persons mentioned in clauses (i), (ii), (iii) and (iv) of sub-section (1) of section 52 and has not disposed off his assets, it shall be inherited by the collaterals other than brothers, sisters and their descendants till the 6th degree.

Succession of the State

79. *Succession of the State.*— In default of all testamentary or legal heirs, the State shall succeed.

80. *Rights and duties of the State.*— The rights and obligations of the State in respect

of the inheritance shall be the same as those of any other heir.

81. *Prior court order.*— The State shall not take possession of any inheritance without prior decision of the court declaring its rights thereto.

CHAPTER IX

Preferential right of the Spouse

82. *Preferential right of habitation and use of surviving spouse.*— (1) The surviving spouse of the estate leaver shall have the right to exclusive habitation of the residential house of the family and the right to use the movables and other objects or utensils intended for the comfort, service and decoration of the house. If such claim is made, the value of the right to habitation and use shall be determined and the surviving spouse shall pay owelty to the heirs if the value of right of habitation and use exceeds the value of her moiety and share, if any.

(2) The person having right to habitation and use is bound to use the property as a prudent man would use.

(3) If the surviving spouse fails to inhabit the house for a period of one year, the right shall cease.

(4) At the request of the owner of the house, the court may, if it deems just to do so, require the surviving spouse to give such security as found necessary.

CHAPTER X

Mandatory Succession, Collation and Reduction

83. *Disposable portion.*— The portion which the testator may freely dispose off shall be called the disposable portion and it shall consist of half of the estate of the estate leaver, except as provided hereunder:—

(a) *Legitime of the parents:* Where the estate leaver has no children or descendants at the time of his death but either his mother or father is alive, the legitime of the

surviving parents shall consist of half of the inheritance.

(b) *Legitime of other ascendants:* Where the estate leaver has at the time of his death ascendants other than the father or mother, their legitime shall consist of one third of the inheritance.

84. *Restrictions on transfer by parents, or grandparents.*— Parents or grandparents shall have no right to sell or mortgage their assets to their children or grandchildren unless the remaining children or grandchildren and their spouses give their consent thereto in writing.

85. *Disposition of specific usufruct or lifetime annuity.*— Where the testator bequeaths a specific usufruct or a lifetime annuity and the value of such usufruct or lifetime pension annuity exceeds in value his disposable portion, the forced heirs may give effect to the legacy or deliver to the legatee the disposable portion only.

86. *Inofficious dispositions.*— Dispositions by the estate leaver by gift or will which exhaust the disposable portion and impair the mandatory share of the forced heirs shall be called inofficious dispositions.

87. *Right of forced heir to claim reduction.*— Where the estate leaver has gifted or disposed off by will assets in excess of his disposable portion, the forced heirs may apply that the gift or the testamentary disposition be reduced.

88. *Renunciation of right to claim reduction.*— No person shall during the lifetime of the estate leaver renounce his right to have the gift or will reduced.

89. *Computation of disposable portion.*— (1) For the purposes of reduction of inofficious gifts or wills, the computation of the disposable portion shall be made as follows:—

(a) the values of all the assets left by the estate leaver on the date of his death, shall be added;

(b) thereupon, the value of the assets gifted by the estate leaver during his lifetime shall be added;

(c) and thereafter, the debts of the estate leaver shall be deducted.

The disposable portion shall be calculated taking into account the total sum.

(2) The value of the gifted assets shall be the value they had on the date of the opening of the inheritance, and this date shall be considered for computation of the disposable portion.

Where the thing gifted has perished for no fault of the donee, the gifted thing shall not be included in the inheritance for the purpose of computation of the legitime, unless otherwise provided.

Rules Relating to Collation

90. *Collation*.— When the gift made in favour of the forced heir impairs the mandatory share of the other forced heirs, the donee shall be bound to restore the excess to the mass of inheritance for the purposes of reconstituting the mandatory share and equalization of partition. Such return is called collation.

91. *Exemption from collation*. — (1) Forced heirs may be exempted from collation if the donor so states expressly or if the donee renounces the inheritance. Nevertheless, the other heirs have the right to obtain reduction of the gift, if the gift is inofficious.

(2) Where the forced heir is exempted from collation, it shall be deemed that the donor intended that the gift be reckoned in the disposable portion.

92. *When is a gift deemed an advancement of the legitime*.— Where the donor makes a gift in favour of his forced heirs without stating that it shall be reckoned in the disposable share, such gift shall be deemed to be an advancement of the future legitime or part thereof.

93. *Collation by grandchildren*.— When the grandchildren succeed to the grandparents as representatives of their parents, they are bound to collate whatever their parents would have to collate, notwithstanding that the grandchildren have not inherited from the parents.

94. *When parents are not bound to collate*.— Parents are not bound to collate to the inheritance of their ascendants what was gifted by the latter to their children nor are the children bound to collate what was gifted to them during the lifetime of their parents, in case they succeed to them by virtue of the right of representation.

95. *Ascendants duty to collate*.— The ascendants who claim the inheritance of the descendant donor are not bound to collate.

96. *Spouses of children not bound to collate*.— The gifts made by the parents to the spouse of their son or daughter are not subject to collation, but when they are made jointly to both the spouses, the son or the daughter, as the case may be, shall be liable to collate to the inheritance his or her respective half of the value of the gifted assets.

97. *Expenses to be collated*.— (1) All the expenses which the deceased has made in favour of his children, whether by way of higher studies or for settling them in life or payment of their debts, shall be collated.

(2) But in the computation of such expenses, ordinary expenses which the parents are bound to incur, are not to be taken into account and the parents may dispense with collation provided the expenses do not exceed the disposable portion.

(3) The money which the children have spent to the benefit of their parents or given to them without being by way of gift, shall be deducted from the amounts to be collated.

(4) Where the deceased has made expenses in favour of his children for settling them in life or for payment of their debts, which have

to be collated or where a co-heir has done improvements to the assets with the written consent of the other co-heirs, the value of the expenses or improvements shall be calculated taking into account the changes in the cost of living or the value of currency.

(5) Sums spent towards maintenance, and remuneratory gifts for services rendered, or gifts made to compensate the children for any properties embezzled by their parents, shall not be subject to collation.

98. *Collation of fruits and profits of gifted things.*— The fruits and profits of the things gifted shall be computed from the date of the opening of the inheritance, for the purpose of collation.

99. *How collation is done.*— (1) The collation shall be made in money, based on the value of the things as assessed at the time of the opening of the inheritance, unless the parties agree that the collation be done in kind.

(2) The value of the improvements made to the gifted properties by the donee, shall be assessed with reference to the date of the opening of the inheritance and it shall be deducted from the value of things gifted.

(3) The deterioration or reduction in value of the things gifted will not be taken into account, where the donee or his representatives are responsible for their deterioration and diminution in value, by reason of an act committed by them or by reason of their negligence.

(4) When collating, livestock, fungibles or consumable things or things subject to wear and tear, the condition in which they were, when possession was delivered to the donee, shall be taken into consideration. When restituting securities which are not in possession of the donee, the value they had at the time of the alienation shall be taken into account, if it is higher than the value they had at the time of the opening of the inheritance.

100. *Where the value of the gifted assets exceeds the value of donee's share in the inheritance.*— Where the value of the gifted properties exceeds the donee's share in the inheritance, the excess shall be returned in kind. The donee shall have the right to choose from amongst the gifted properties those that are necessary to make up his share in the inheritance and the encumbrances on the gift. The donee does not have the right to take part in the licitation of the properties, which he has to return to the other co-heirs. In case, amongst the gifted properties, there is any property which is physically indivisible and which in its totality does not fit in the share of the donee, it shall be collated in kind and the donee shall be entitled to take part in the licitation, subject to the provision of section 427.

101. *On payments made.*— Payments made by the donee, payments of the debts of the donor or payments of the encumbrances in favour of third parties, including the payment to any co-heirs on account of their share in the value of the gifted properties, shall be updated with reference to the official index of inflation. The provision is applicable to collations and gifts, made in cash.

102. *Family arrangement.*— A gift *inter vivos* by a married couple, with or without the reservation of usufruct and with the written consent of all the presumed forced heirs, of their assets or a part thereof to any one or more of the presumed forced heirs, where the donees compensate or undertake to compensate the presumed forced heirs of their future mandatory share, is valid and shall not be deemed to be a contractual succession. Any change in the value of the assets at the time of the opening of the inheritance shall, in these cases, be irrelevant.

The owelty money, if not paid immediately, shall carry interest at the rate of 8% per annum.

103. *Gift of community assets.*— (1) When community assets are gifted by both the spouses, on the death of one of them the

respective half only shall be brought for collation and on the death of the other spouse, the other half shall be brought for collation. If the assets gifted are exclusive assets of either of the spouses, such assets shall be brought for collation, upon the death of the respective spouse.

(2) Once valuation of the community assets, which have not been gifted, is made, the same valuation is valid for the second partition, having regard to the official index of inflation.

(3) When a single judicial partition is made upon the death of both the donor spouses, the community assets gifted shall be valued only once with reference to their value at the time of the opening of the inheritance of the donor who has predeceased. This value shall be corrected as regards the second inheritance, if need be, taking into account the official index of inflation between the dates of the opening of the respective inheritance.

104. *How the shares of co-heirs are to be paid.*— (1) The shares of co-heirs of the donee shall be filled up, as far as possible, with assets of the same nature and kind, as those gifted to the donee.

(2) Where the gifted assets are immovables, and if it is not possible to fill up the shares of the co-heirs in the aforesaid manner, the said co-heirs shall be compensated in money. If there be no funds in the inheritance, as many properties as may be necessary to fetch the required amount, shall be sold in public auction. If the assets are movable, the co-heirs shall be compensated with other movables, having regard to their fair value.

105. *When the value of the assets gifted exceeds the legitime of the donee.*— When the value of the assets gifted exceeds the legitime of the donee, the excess shall be computed in the disposable portion of the donor. If despite such computation, the legitime and the disposable portion are exceeded, the donee shall be liable to bring the excess into the estate.

106. *Where there are several donees.*— Where there are several donees, and the disposable portion is not sufficient to satisfy all the donees, the provisions of sections 113 and 114, shall be followed.

107. *Dispute as regards obligation to collate.*— Where there is a dispute between the co-heirs regarding the obligation to collate or over the subject of collation and the dispute cannot be decided in the inventory, the inventory proceeding shall not be stayed on that ground and the person bound to collate, shall furnish security in respect of the properties gifted to him till the dispute is decided by a competent court.

108. *Assets which devolve in a preferential manner.*— (1) The successor of any assets, which are not subject to partition, and which devolve in a preferential manner, is bound to collate such improvements which have increased the value of the assets.

(2) Where the assets which are not subject to partition and which are to devolve in a preferential manner have been acquired for a valuable consideration, the price of the acquisition or their value, shall be collated, at the option of the successor.

109. *Duty to collate is a charge in rem.*— The duty to collate constitutes a charge in rem on the gifted immovable properties.

110. *Reduction of legacy or gift.*— (1) Where the legacy or the gift impairs the legitime of the forced heirs, the legacy or gift may be reduced for inofficiousness to the extent necessary to make up the legitime.

(2) For the purpose of determining whether there is inofficiousness, the disposable share shall be computed as provided in section 89.

111. *Order of reduction.*— Where inofficious gifts have been made, gifts *mortis causa* or legacies shall be reduced first and the gift *inter vivos* shall be reduced only when legacies are not sufficient to make up the legitime of the forced heirs.

112. *Partial reduction.*— Where a partial reduction of the legacies is sufficient to make up the legitime of the forced heirs, the legacies shall be reduced *pro rata*, amongst the legatees, unless the testator has in his will stated that any one of the legatees shall be exempted from reduction or which shall be the order of reduction.

113. *Reduction of gifts inter vivos.*— Where gifts *inter vivos* are to be reduced, the last shall be reduced first in its totality or in part, and when the last gift is not sufficient to make up the legitime, the next immediate shall be reduced and so on.

114. *Pro rata reduction.*— Where several gifts are made in the same gift deed or on the same day, the gifts shall be reduced *pro rata*.

115. *Reduction in respect of movables.*— When the gift consists of movables, their value at the time the gift was made shall be taken into account for the purpose of reduction and the provisions of sub-sections (3) and (4) of section 99 shall be applicable.

116. *Reduction of gifts of immovables.*— (1) When the gift consists of immovables, they shall be reduced in specie, and the provisions of sub-sections (3) and (4) of section 99 shall be applicable.

(2) For the purpose of reduction, their value shall be computed as on the date the reduction is made, and neither the increase in the value resulting from the improvements made by the donee nor the decrease of such value arising from deteriorations imputable to the same donee shall be included therein.

117. *When immovable cannot be divided.*— Where any immovable is not susceptible to division without detriment:

(a) when the amount of reduction exceeds half of the value, the donee shall have the remainder in cash; and

(b) when the reduction does not exceed the said half, the donee shall return the amount of the reduction.

118. *When the donee may retain the gifted property.*— Where the donee is also a co-heir, he may retain the gifted property, if the value of such immovable does not exceed the value of the legitime of the co-heir added to the value of the reduced gift.

Otherwise, the donee shall return the gifted property to the inheritance, and he shall be paid off for the legitime and the reduced gift in accordance with the general rules of partition.

119. *When immovable properties are not in possession of the donee.*— Where the immovable properties are not in possession of the donee at the time of the reduction or revocation, he shall be liable for its value at the time of the opening of the inheritance. If the donee has alienated the gifted assets, he shall have to compensate in cash and if the donee has mortgaged the gifted assets, the heir to whom such assets have been allotted shall be entitled to redeem the mortgage and claim the amount of redemption including the expenses incurred in that regard from such donee.

120. *When the donee is insolvent.*— Where the gift consists of movables and the donee is insolvent, the parties may claim from the immediate transferees, if the transfer was done gratuitously and the right is not extinguished by prescription, the value of such movables at the time of the acquisition.

121. *Fruits and profits in the event of reduction.*— The donee affected by reduction is liable for the fruits and profits only from the date of demand. However, if the donee is a co-heir, he is liable from the date of the death of the donor.

CHAPTER XI

Testamentary Succession

122. *Institution of heir.*— One or more persons may be instituted as heirs and even where the testator has left them shares in the inheritance in a certain proportion, they shall nevertheless be considered as heirs.

123. *Liability of the heirs.*— The heir is liable to pay the debts and satisfy the legacies within the resources of the inheritance.

124. *Liability of the legatee.*— The legatee is not liable for the encumbrances of the legacy beyond the resources of the legacy.

125. *Apportionment of liabilities where inheritance is distributed by way of legacies only.*— (1) Where the inheritance has been entirely distributed by way of legacies, the debts and encumbrances shall be distributed among the legatees in proportion to their legacies, unless the testator has given directions to the contrary.

(2) Where the assets of the inheritance are not sufficient to pay the legacies, the same shall be paid *pro rata*, except for remuneratory legacies which are considered to be debts of the inheritance.

126. *Specific sum or thing bequeathed.*— Where the testator has bequeathed a specific sum of money only or a specified thing or a determined part of the inheritance, the disposition shall be considered to be a legacy.

127. *Institution of heirs collectively.*— Where the testator institutes certain heirs individually and others collectively and says, for instance, “I institute as my heirs Peter and Paul and the children of Francis”, those who are collectively instituted shall be considered to be appointed heirs individually.

128. *Brothers or sisters generally instituted as heirs.*— Where the testator institutes his brothers or sisters in general as heirs and he has full blood, consanguineous or uterine brothers or sisters, the succession shall be considered intestate.

129. *Institution of certain person and his children.*— Where the testator institutes a certain person and his children as heirs, they shall be considered to have been appointed heirs simultaneously and not successively.

130. *Right to be compensated for management of inheritance distributed by way of legacies.*— The heir, who has managed the inheritance which has been distributed by way of legacies, shall be entitled to be compensated by the legatees for the expenses which he has incurred towards the legacies.

131. *Legacy of a thing subsequently acquired.*— Where the bequeathed thing, which did not belong to the testator at the time he made the will, subsequently comes to belong to him under any title, the bequest shall take effect as if such thing belonged to the testator at the time the will was made.

132. *Legacy of a thing belonging to the heir or legatee.*— Where the testator directs that the heir or the legatee shall give to another person a thing belonging to one of them, he shall be bound to carry out the disposition or give the value of the thing, if he does not choose to relinquish the inheritance or the legacy.

133. *Legacy of a thing which belongs only in part to the testator or to his successors.*— Where the testator, the heir, or the legatee, is the owner of a part only of the bequeathed thing or has a limited right only to the bequeathed thing, the bequest shall take effect only to the extent of such part or of such right.

134. *Restraint on marriage.*— (1) The condition which prohibits the heir or the legatee from getting married, or from remaining unmarried, except when the same is imposed on a widow or widower having children, by the deceased spouse or by his or her descendants or ascendants and so also the condition which compels him to take priesthood vows or to take or not to take a certain and specified profession, shall be deemed inexistent.

(2) The provisions of sub-section (1) shall not be applicable to testamentary disposition which limits the duration of the benefits for the period during which the heir or legatee holds a particular status, namely, bachelorhood, widowhood, or married status.

135. *Condition to reciprocate.*— The disposition made on condition that the heir or legatee shall also make in his will a disposition in favour of the testator or of another person, shall be null and void.

136. *Deferred execution of the disposition.*— The condition which suspends the operation of the disposition for a certain period, shall not be a bar for the heir or legatee to acquire right to the inheritance or to the legacy and to transmit it to his heirs.

137. *Ineffective dispositions.*— The legacies shall not take effect:—

(a) if the testator alienates the bequeathed thing; or

(b) when the bequeathed thing is res extra-commercium; or

(c) when the testator transforms the bequeathed thing in such a way that it does not have either its original form or its denomination; or

(d) where the testator has been dispossessed of the bequeathed thing by a person having a lawful title thereto or it has been wholly destroyed during the lifetime of the testator and the heir is not responsible therefore.

138. *Legacy in the alternative.*— (1) Where a legacy is in the alternative, that is, the testator makes a bequest of one of two or more things and one of them is destroyed, the existing thing or things shall be delivered to the legatee.

(2) Where only a part of the thing is destroyed, the remainder shall be delivered.

139. *Indivisibility of the disposition.*— The legatee is not entitled to accept a part of the legacy only and relinquish the other part; neither is the legatee entitled to relinquish an onerous legacy and accept the one which is not onerous.

However, the heir, who is at the same time a legatee, may relinquish the inheritance and accept the legacy and vice versa.

140. *Superveniencence of descendants.*— (1) The will made by a person who did not have children at the time of making it or did not know that he had children, lapses in the event of superveniencence of children or other descendants.

(2) A legacy does not lapse in any of the cases mentioned above but it may be reduced as inofficious in accordance with section 110.

141. *Effect of supervenient children predeceasing.*— Where the supervenient children die before the testator, the disposition shall take effect unless revoked by the testator.

142. *Legacy of a pledged thing.*— Where the bequeathed thing is pledged, it shall be redeemed at the expense of the inheritance.

143. *Legacy of thing ascertainable at the place where found.*— The legacy of a thing or a quantity which is to be received at a fixed place, shall take effect only to the extent of the portion that is found at that place.

144. *Legacy of debt not fallen due.*— (1) Where the testator bequeaths a certain thing or a certain amount as a debt owed by him to the legatee, the legacy shall be valid, notwithstanding that the amount or thing was not really due, unless the legatee was incompetent to receive it as a gift.

(2) If a debt is to fall due only after a certain period, the legatee is not bound to wait for the expiry of the period to demand its payment. However, the legacy will not take effect if the testator, who was a debtor at the time of making of the will, has paid the debt subsequently.

145. *Legacy made to the creditor of testator.*— (1) Where the testator makes a bequest to the creditor without making any reference to the debt of the testator, the legacy shall not deemed to have been made in payment of debt.

(2) Where the testator bequeaths any outstanding debt due to him, whether

recoverable from a third party or from the legatee himself, or discharges the legatee of the debts, the heir shall carry out the bequest by handing over to the legatee the respective instrument, if any.

(3) Where it is proved that the debt due to the testator has been paid, wholly or in part, the legatee may demand from the heir the equivalent of the debt or of the part paid; but when the extinguishment of the debt results from any other cause, he shall not be entitled to make any demand to obtain its payment.

146. *Unconditional legacy.*— An unconditional legacy confers on the legatee a transferable right from the date of the testator's death.

147. *Choice of legacy of a generic thing.*— (1) Where the testator makes a bequest of an unspecified thing comprised in other things of the same kind, the selection of such thing shall be made by the person who has to hand it over from amongst the things having similar qualities.

(2) Where the right to select is by an express disposition of the testator given to the legatee, he shall in his discretion select from amongst the things of the same kind.

But where things of the same kind do not exist in inheritance, it is the heir who shall select the thing to be given to the legatee and such thing shall be of similar value or quality.

148. *Heir's right to select.*— Where the legacy is in the alternative and the right to select has not been expressly conferred on the legatee, the heir shall have the right to select.

149. *Transmission of right to choose.*— Where the heir or legatee who has the right to select, has not made such selection during his lifetime, such right shall devolve on to the heirs. Once the selection is made, it shall be irrevocable.

150. *Legacy for maintenance.*— (1) Where a legacy is given for the maintenance of a legatee, the legacy shall include food, clothing

and lodging and, when the legatee is below 18 years of age, it shall also include education, unless otherwise provided in the will.

(2) The maintenance given for education may be reduced in the event the ability to give or the need to receive, is reduced.

151. *Legacy of house with things existing in it.*— Where a house with all things found therein is bequeathed, the bequest shall not include debts due to the inheritance notwithstanding the fact that the instruments and documents relating to such outstanding debts due to the testator, are found in the house.

152. *Legacy of usufruct.*— A legacy of usufruct without fixing the period of its duration shall be construed to have been made for the lifetime of the legatee and where such legatee is a body with perpetual succession, the legacy shall be construed to have been made for a period of thirty years only.

153. *Legacy to minor.*— A legacy to a minor which is to be received by him after he attains majority, cannot be demanded by him before he attains majority.

154. *Legacy for charitable purposes.*— A legacy left for charitable purposes shall be construed to have been made for the purpose of welfare and charity, unless otherwise provided in the will.

155. *Mistake as to object or subject of the legacy.*— The mistake of the testator in respect of the object or the subject of the legacy shall not render the legacy void, if it is possible to ascertain clearly what was the intention of the testator.

156. *Delivery of legacy.*— (1) Where the legatee is not in possession of the bequeathed thing, he shall call upon the heirs to give effect to the legacy.

(2) When the heirs delay in taking charge of the inheritance, the legatee may cause summons to be served on them to accept or renounce the inheritance.

(3) Where the heirs renounce the inheritance, the legatees may apply that a curator be appointed for the inheritance and demand the delivery of the legacy from the appointed curator.

(4) Where the legacy is an encumbrance on another legacy, the legatee of the encumbrance shall demand the legacy from the latter.

157. *Duty to carry out the will.*— (1) Where the entire inheritance has been distributed by way of legacies and the testator has not appointed an executor, the legatee who is the most benefited shall be deemed to be the executor.

(2) Where there be more than one legatee in similar circumstances, such legatees shall choose one of them to be the executor.

(3) When there is no agreement between the legatees, or when any of such legatees is a minor, absent person or under interdiction, the executor shall be appointed by the court.

158. *Fruits and income of legacy.*— Unless the testator has provided otherwise, the legatee is entitled to the fruits and profits of the bequeathed thing right from the date of the death of the testator, as well as to the interest accrued from the money bequeathed, from the expiry of the time to carry out the legacy.

159. *Legacy of periodic sums.*— Where the testator bequeaths periodic sums, the first period shall run from the date of the testator's death. The legatee shall have the right to the said installment the moment the new period commences, even if the legatee dies before the period comes to an end. However, the bequest shall be enforceable at the end of the period only, unless the bequest is for maintenance in which case it shall be enforceable at the beginning of the period.

160. *Expenses for delivery of legacy.*— The expenses for the delivery of the bequeathed thing shall be met by the inheritance, unless the testator has provided otherwise.

161. *Manner and place of delivery.*— The bequeathed thing shall be delivered together with its accessories at the place and in the condition in which it was at the time of the testator's death. If the bequest consists of money, jewellery, or shares and other securities, whatever may be the type of the instruments, it shall be delivered at the place where the inheritance is opened, unless the testator has provided otherwise or there is an agreement between the parties to the contrary.

162. *New acquisitions.*— If the person who bequeaths any immovable property adds subsequently to such property new acquisitions, these acquisitions, even if contiguous, shall not form part of the legacy without a new declaration of the testator. In case any improvement is made to the bequeathed property which is necessary, useful or luxurious, it shall form part of the legacy.

163. *Legacy of thing burdened with encumbrance in rem.*— If the bequeathed thing is burdened with any emphytheutic fee, share in the rent, easement or any other encumbrance inherent thereto, the bequeathed thing shall go to the legatee with the encumbrance. However, if such encumbrances are in arrears, such arrears shall be met by the inheritance.

164. *Lien on immovable assets.*— The immovable assets which devolve on the heirs from the testator are subject to a lien for the satisfaction of the legacies. However, if any one of the heirs is specifically made liable for any such payment, the legatee can exercise this right over the immovable asset which may be allotted to the said heir in the partition.

165. *Duty of co-heirs to compensate when the legacy consists of an asset of one co-heir only.*— Where the testator bequeaths a thing belonging to one of the co-heirs, the other heirs shall be bound to compensate him proportionately unless the testator has provided otherwise.

166. *Institution of heir or legatee subject to fulfillment of condition.*— If the inheritance or the legacy has been left subject to the condition that the heir or legatee should not give a specified thing or should not perform a specified act, the said heir or legatee may be compelled, at the instance of the interested parties, to furnish security for the performance of the condition, unless the condition is one of those contemplated by section 134.

167. *Conditional legatee.*— If the legacy is conditional or is to take effect after a certain time, the legatee may require the person who has to deliver the legacy, to furnish security.

168. *Responsibility of the heir apparent.*— (1) If the will is declared null and void after the payment of the legacy and the legacy has been satisfied in good faith, the heir instituted in the will shall stand discharged of his responsibility towards the true heir by delivering the remainder of the inheritance.

(2) The preceding provision shall also be applicable to legacies subject to encumbrances.

169. *Reduction of encumbrance attached to legacy.*— When the legacy is subject to an encumbrance and the legatee does not receive the whole legacy due to his own fault, the encumbrance shall be reduced proportionately and, in case he is dispossessed from the bequeathed thing, the legatee may demand the restitution of whatever was paid by him.

Right of Accretion

170. *Right of accretion.*— (1) If any of the instituted co-heirs dies before the testator or renounces the inheritance or becomes incapable or unworthy of receiving it, his share shall be added to the shares of the other instituted co-heirs, unless the testator has provided otherwise.

(2) The heirs shall also be entitled to the right to accretion, if the legatees do not want or are unable to receive the legacy.

171. *Exclusion of right of accretion.*— (1) The legatees shall not have the right of accretion *inter se*.

(2) If the bequeathed thing is indivisible or cannot be divided without detriment, the co-legatees shall have the option either to retain the whole thing against payment to the heirs of the value of the excess or to receive from them whatever as of right belongs to them, delivering to such heirs the bequeathed thing.

However, when the legacy is encumbered with an obligation and the said obligation lapses, the legatee shall profit from the resulting benefit, if the testator has not provided the contrary.

172. *Effects of accretion.*— The heir who acquires a share in the inheritance by reason of accretion shall succeed to all rights and obligations of the heir who did not wish or could not receive the disposition, had it been accepted by him.

173. *Renunciation of right of accretion.*— The heirs who get the right of accretion may renounce it in the event it carries special encumbrances created by the testator; but, in such a case, the said portion shall revert to the person or persons in whose favour the encumbrances have been created.

174. *Right to legacy.*— The legatee shall have the right to recover the bequeathed thing, whether movable or immovable, from a third party, provided that the bequeathed thing is certain and specified.

Substitutions

175. *Common or direct substitution.*— The testator may appoint one or more persons to substitute the instituted heir or heirs or legatees in case such heirs or legatees cannot or do not wish to accept the inheritance or the legacy. This is called common or direct substitution. Such substitution ceases to operate upon such heir accepting the inheritance.

176. *Pupillary substitution.*— (1) The testator, who has children or other

descendants under parental authority, who will not upon the death of the testator be under the authority of another ascendant, may substitute the said children or other descendants by heirs or legatees of his choice, in case the said children or other descendants die before completing eighteen years of age, irrespective of their sex. This is called pupillary substitution for minors.

(2) Such substitution becomes ineffective when,—

(a) the person substituted attains the age of eighteen years or

(b) the substituted person dies leaving behind descendants entitled to succeed.

177. *Quasi pupillary substitution.*— (1) The provisions of section 176 shall be applicable, irrespective of the age, when the child or other descendant is of unsound mind provided he is so declared by the court. This is called quasi pupillary substitution.

(2) Such substitution shall become ineffective if such unsoundness of mind ceases.

178. *Properties which may be subject to substitution.*— The substitution, pupillary or quasi-pupillary, may comprise such properties only which the substitute could have disposed of, if he was not unable or debarred from doing so at the time of his death and which he may have acquired through the testator.

179. *Rights and duties of the substitute.*— The substitute shall receive the inheritance or legacy with the same encumbrances, with which the substituted heirs or legatees would have received, with the exception of encumbrances which are solely personal, unless it has been provided otherwise.

180. *Reciprocal substitution.*— When the co-heirs or legatees with equal shares are reciprocally substituted, it shall be deemed that they have been substituted in the same proportion. However, if the number of substitutes exceeds the number of instituted

heirs or legatees and no provision in that regard has been made, it shall be deemed that they were substituted in equal shares.

181. *Fide-commissary substitution.*— (1) The testamentary disposition whereby any heir or legatee is bound to preserve the inheritance or the legacy which on his death is to go to a further beneficiary is called the fide-commissary substitution or fidei-commissum and such heir or legatee is called fiduciary and such further beneficiary shall be called fidei-commissarius.

(2) It shall not be lawful to make a fide-commissary substitution in more than one degree.

182. *Lapse of fidei-commissum.*— If the fidei-commissarius, who is the ultimate beneficiary, does not accept the inheritance, or dies before the fiduciary, the substitution shall lapse and the fiduciary shall be the absolute owner of the properties.

183. *Nullity of the substitution.*— The nullity of the clause relating to fide-commissary substitution does not render the institution of the heir or the appointment of the legatee null and void. The fide-commissary clause only shall be deemed to be non-existent.

184. *Dispositions which are not analogous to fidei-commissum.*— Dispositions whereby the testator leaves the usufruct to one person and the naked ownership to another or successive usufructs are not fide-commissary substitutions.

185. *Deemed fidei-commissum.*— (1) (a) Dispositions made subject to a condition prohibiting alienation *inter vivos* and (b) dispositions which appoint a third person to take what is left from the inheritance or the legacy, on the death of the heir or of the legatee, are deemed to be fidei-commissum and as such valid upto one degree.

(2) In cases covered by clause (b) of sub-section (1), the fiduciary shall be entitled

to alienate only when he does not have any properties of his own, apart from his residential house, and upon obtaining written consent of the fidei-commissarius for the purpose or upon his consent being dispensed with by an order of the court.

186. *Encumbrances in favour of paupers, etc.*— The dispositions which impose on the heir or the legatee the obligation to pay successive sums of money in favour of paupers, or in favour of any public utility institution or foundation are valid. In this case, however, the burden shall be charged on specific assets and such heir or legatee shall be allowed to capitalize, or convert the instalments into corresponding capital in money.

187. *Irregular fidei-commissum.*— When the testator makes a disposition for a public purpose, the testator may provide that in case the institution which has to carry out the will of the testator is extinguished, the same properties shall go to another institution or legal body nominated by him.

188. *Applicability to past and future fidei-commissum.*— The provisions of the preceding sections are applicable to past and future fidei-commissum.

Disinheritance

189. *Disinheritance.*— The forced heirs may be deprived by the testator of their legitime or be disinherited by declaring his wish in the will, only when the law expressly permits him to do so.

190. *Grounds for disinheritance.*— The testator may in his will disinherit by expressly declaring that he does so, disclosing the grounds on which he disinherits, the following persons:—

(a) the presumed heir when he is convicted for an offence intentionally committed against the testator, his spouse, ascendants, brothers, adopter or adoptee, punishable with imprisonment of more than six months;

(b) the presumed heir who has been convicted for having lodged malicious prosecution or for perjury against any of the persons mentioned in the clause (a) above;

(c) the presumptive heir who, without sufficient cause, refused to maintain the testator and or his spouse.

191. *Effects of disinheritance.*— The descendants of the disinherited persons, who survive the testator, shall be entitled to the legitime which their ascendant was deprived of, but the ascendant who was disinherited is not entitled to enjoy the usufruct of the legitime received by his descendants.

192. *Burden of proof.*— When the ground for disinheritance is contested, the burden of proving that such ground exists shall be on the persons who benefit from the disinheritance.

193. *Failure to mention ground or irrelevant ground.*— When the testator declares that he disinherits without clearly mentioning the ground or when the ground is not proved or the ground is unlawful, the dispositions of the testator affecting the legitime of the disinherited heir, are void to that extent.

194. *Right to maintenance of the disinherited heir.*— When the disinherited heir has no means of subsistence, the beneficiary of the assets of which the disinherited heir has been deprived is bound to provide maintenance to him but not beyond the income of the said assets, unless the said maintenance is due for any other reason.

195. *Period of limitation to challenge disinheritance.*— The person who has been disinherited and wishes to challenge the disinheritance may file a suit within three years from the date of knowledge of the will or the date of death of the testator, whichever is latter.

CHAPTER XII

Wills

196. *Concept of Will.*— (1) A will is an unilateral act whereby a person makes disposition of the whole or a part of his estate to take effect upon his death.

(2) All dispositions which are by law permitted to be included in a will are valid if done with all the formalities required to make a will, notwithstanding that they do not contain disposition of assets.

197. *Will is a personal act.*— A will is a personal act. It shall not be lawful to make a will through an attorney nor to leave it to the discretion of another person, either as regards the institution of heirs or appointment of legatees or as regards the subject matter of the inheritance or as regards the execution of the will.

However, the testator may entrust the partition or the inheritance to a third party when he institutes or appoints a class of persons as heirs or legatees.

198. *Will dependant upon instruction.*— Dispositions which (a) depend on instructions secretly given to another person or (b) refer to documents which are not authentic or are not written and signed by the testator or (c) are made in favour of uncertain persons, who cannot be ascertained in any manner, shall not take effect.

199. *Disposition in favour of unnamed relatives.*— Dispositions in favour of the relatives of the testator or in favour of relatives of another person without specifically designating the person, shall be presumed to have been made in favour of the nearest relatives of the testator or of the person indicated, as per the order of legal succession.

200. *Conditional disposition.*— The testator may either make an unconditional disposition of his estate or he may dispose of his estate subject to conditions, provided such

conditions are not absolutely or relatively impossible of performance or contrary to law, morality or public policy. A condition which is impossible of performance or contrary to law morality or public policy shall be presumed to be inexistent and shall not adversely affect the heirs or legatees notwithstanding that the testator has provided to the contrary.

201. *Obstruction to fulfillment of condition.*— Where a person who is interested in the non-performance of the condition, obstructs its fulfillment, the condition is presumed to have been fulfilled.

202. *Reason contrary to law.*— Where the testator gives the reason or motive for making the will and the reason or motive, whether true or false, is contrary to law, the disposition shall be null and void.

203. *Disposition where time for commencement or cessation of heirship is fixed.*— Where the testator fixes a time limit from which the institution of the heirs shall commence or cease, such a declaration shall be deemed as not written by the testator.

204. *Will obtained by coercion, undue influence, deceit, or fraud.*— (1) A will obtained by coercion, undue influence or by deceit or fraud, is voidable.

(2) The intestate heir forfeits his right to the inheritance when by deceit, fraud, undue influence or coercion he had prevented the estate leaver from making a will and the inheritance shall devolve on the person upon whom it would devolve, had such heir not existed.

205. *Duty of authorities.*— An administrative authority which comes to know that a person is preventing another from making a will is duty bound to go promptly to the house of the person so prevented with a Special Notary and two witnesses. Upon verifying that the information is true, set the said person free to make a will and he shall also cause a report to be written and forwarded to the Assistant Public Prosecutors/Public Prosecutor.

A person who prevents another from making a will shall be liable to be prosecuted.

206. *When expressions are insufficient.*— A will wherein the testator has not expressed clearly and fully his wish but only by signs and monosyllables in answer to questions put to him, is null and void.

207. *Prohibition imposed by testator to challenge his Will.*— It shall not be lawful for the testator to prohibit his legal heirs from challenging the validity of his will, when such will is null under the law.

208. *Joint Wills.*— It shall not be lawful for two or more persons to make a will jointly in the same instrument, whether for their common benefit or for the benefit of third parties.

209. *Revocation of Will.*— (1) A will may be freely revoked by the testator fully or in part by another will or by a deed before the Special Notary with the same formal requirements.

(2) It shall not be lawful for the testator to renounce his right to revoke the will.

(3) When the testator alienates the bequeathed thing before his death, the will shall stand revoked *pro tanto*.

210. *Implied revocation.*— (1) Where a subsequent will is made without making a reference to the earlier one, the subsequent will revokes the earlier will to the extent of its inconsistency only.

(2) Where there are two wills of the same date and it is not possible to ascertain which of them is later in point of time, the contradictory or inconsistent dispositions in both the wills shall be deemed inoperative.

211. *Effect of Will which has lapsed.*— The revocation of a will shall take effect notwithstanding that the subsequent will lapses on account of the incapacity of the heir or of the legatee appointed therein or on account of the relinquishment of the inheritance by the heir or by the legatee.

212. *Restoration of Will.*— Where the testator revokes the subsequent will and declares that he wishes that his earlier will shall subsist, the earlier will shall stand restored.

213. *When testamentary dispositions lapse.*— A testamentary disposition shall lapse and become ineffective in relation to the heir or the legatee,—

(a) where the heir or legatee dies before the testator;

(b) where the heir is instituted or the legacy is left subject to a condition and the heir or legatee dies before the condition is fulfilled;

(c) where the heir or the legatee is under a disability to acquire the inheritance;

(d) where the heir or the legatee renounces his rights.

214. *Effect of ignorance of existence of children.*— If the testator had children or other descendants and he did not know that he had children or other descendants, or he thought that they were dead, or where the children are born to the testator after his death, or where the children are born to the testator before his death, but after the will was made, the will shall be valid only to the extent of the disposable portion of the testator, in accordance with section 140.

215. *Interpretation of Wills.*— (1) Where any doubt arises as to the interpretation of a testamentary disposition, the intention of the testator shall be gathered from the will and accordingly carried out.

(2) When the words of a will are unambiguous, but it is found from extrinsic evidence that they admit of interpretations, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these interpretations was intended.

216. *Object contrary to law, morality or public policy.*— A testamentary disposition is void when from its interpretation it follows that the will was intended essentially for an object contrary to law, morality or public policy.

Who may make a Will and acquire by Will

217. *Capacity to make a Will.*— A person who by law is not expressly forbidden from making a will, may make a will.

218. *Incapacity to make a Will.*— (1) A person who is not in his full senses or a person of either sex under 18 years of age, is incompetent to make a will. Blind persons, or persons who are unable or do not know to read are incompetent to make closed wills.

(2) The capacity of the testator to make a will is determined at the time when the will is made.

219. *Restrictions on disposition of community assets.*— A disposition of specific and determined properties by a person who is married under the regime of general community of assets is null and void, unless:—

(a) the assets disposed of are allotted to him in a subsequent partition; or

(b) they do not form part of the community; or

(c) the disposition has been made by one of the spouses in favour of the other; or

(d) the other spouse has in a document drawn by a Special Notary given consent to the said disposition.

220. *Restrictions on disposing of specific assets of the inheritance.*— (1) It shall not be lawful for a co-heir to dispose of any specific asset of the inheritance or right to a part of specific assets, unless such asset or right to such part, is allotted to him in a partition

(2) The disposition made in contravention of this section shall be null and void.

221. *Relative incapacity of sick person.*— A will made by a sick person in favour of the

physician or nurse who attended to him during his illness or in favour of the priest who assisted him spiritually during his illness shall not take effect if the sick person dies of that illness.

However, (a) a legacy by way of remuneration for the services rendered to the sick person when such person was not paid any remuneration for the services or (b) a disposition made in favour of the descendants, ascendants, collaterals till the third degree or to the spouse of the testator, are valid.

222. *Disposition in favour of a person who has rendered domestic help or care and assistance.*— A disposition made by a sick and old person, having ascendants, descendants, collaterals till the fourth degree or spouse, in favour of a person who has rendered domestic help or care and assistance to such person shall not exceed one third of the value of inheritance. However, a disposition made in favour of ascendants and descendants, collaterals till the fourth degree or the spouse of the testator is valid.

223. *Relative incapacity—Disposition in favour of guardian or manager of assets.*— A disposition made by a person who is interdicted or under disability in favour of his guardian or manager of his assets, even if the accounts of the management have been already approved, shall be void.

224. *Relative incapacity—Disposition by adulterous spouse.*— Where the adultery is proved in court, either in criminal or civil proceeding, before the death of the testator, the adulterous spouse shall be incompetent to make a disposition in favour of the partner in the adultery.

225. *Relative incapacity—Disposition in favour of the Special Notary.*— The testator shall be incompetent to make a disposition in favour of the Special Notary who draws his will or certifies his closed will or in favour of the person who writes the will for him or in favour of the witnesses to, or interpreter of, the will or to the record of approval or certification of the closed will.

226. *Extent of nullity.*— Only that part of the testamentary disposition which is hit by the provisions which refer to the relative incapacity of the testator shall be null and void.

227. *Restrictions on impairment of mandatory share.*— Persons who are bound by law to reserve the legitime may dispose of only the disposable portion.

228. *Who may receive by Will.*— (1) Only living persons, including an embryo, may acquire by will. The embryo is deemed to exist when born alive and with human figure within 300 days from the death of the testator.

(2) However, the disposition is valid even when the future heir or legatee is born beyond the period of 300 days from the date of the death of the testator, if the disposition is in favour of the children yet to be born who are descendants in the first degree of certain or specified persons alive at the time of the death of the testator.

229. *Relevant time to determine capacity to acquire by Will.*— The relevant time to determine the capacity to acquire by will is the time of the testator's death. Where an heir is instituted subject to condition, or where the legacy is left subject to conditions, the relevant time to determine the capacity to acquire by will is not only the date of the testator's death but also the time of fulfillment of the condition.

230. *Consequence of incompetence to acquire by legal succession.*— A person who is incompetent to acquire by legal succession as provided in section 9 is incompetent to acquire by testamentary succession.

231. *Consequences of refusal to act as executor or guardian or their removal.*— The executor who refuses to accept the office or who, having accepted the office, is removed therefrom on account of mismanagement and so also the testamentary guardian who refuses the office or is removed therefrom, forfeits the right to whatever is bequeathed to him by the testator.

232. *Capacity of corporate bodies.*— Corporate bodies, associations, trusts, or other

legal entities may succeed by will as heirs or legatees.

233. *Fictitious disposition.*— (1) A will made in favour of an incompetent person by ostensibly making it in favour of another person with an understanding that it will benefit the incompetent person or through an intermediary shall be null and void.

(2) A testamentary disposition is deemed to have been made through a fictitious person when it is made in favour of the spouse of the person who is incompetent to acquire by will or to a person whose presumptive heir he is or when made in favour of a third party who has agreed with the person who is incompetent to acquire by will that he will transmit the benefit of the will in favour of the latter.

Types of Wills

234. *Types of Wills.*— Wills may be of the following categories:—

- (a) Public;
- (b) Printed open;
- (c) Closed or sealed;
- (d) Wills made outside Goa.

235. *Public Will.*— A testator who wishes to make a public will has to declare his last wish before any Special Notary in the presence of two witnesses, worthy of credit so that he may record the will in the Book of Wills.

236. *Printed open Will.*— A testator who knows to read, may opt to present to the Special Notary a computer generated printout of the operative part of his will on a standard paper of the size of 29.7 cms. x 21 cms. entitled 'open Will' and declare before the Special Notary that the printout contains his last wish in the presence of two credit worthy witnesses, who shall identify the testator, and certify that the testator is in his senses and free from coercion.

237. *Closed or sealed Will.*— Closed or a sealed will shall be written and signed by the

testator, or it may be written by another person at the request of the testator and signed by the testator. The person who signs the will shall initial all its pages. The testator is exempted from signing the will where he is unable to sign it; however, the fact that he is unable to sign the will shall be recorded in the will by the Special Notary.

238. Incompetence to make a closed Will.— Persons who do not know or are unable to read are not competent to make dispositions by way of a closed will.

239. Failure to present the closed Will.— Where a person who is in possession of the closed will, and, where the will is made by an absent person, does not present it or, in case of the testator's death, does not present it within thirty days from the date of the knowledge of the death, he shall be liable to pay damages. Where the person who fails to present the will is guilty of deceit, he shall, besides being liable to pay damages, forfeit his right, if any, to the inheritance of the testator and shall also be liable for criminal prosecution.

240. Fraudulent removal of Will.— Any person who fraudulently removes the will from the effects of the testator or from the possession of any person with whom it is deposited shall be subject to pay damages, forfeit his right to the inheritance and shall also be liable for criminal prosecution.

241. Where the closed Will is found open.— Where the closed will is found opened, whether amidst the effects of the testator or in the possession of a third party but without any other defect, it shall not be annulled for that reason. In such a case, the will shall be presented as it is to the Special Notary of the sub-district, who shall draw a record stating the above facts in accordance with sections 341, 342, 343 and 344.

242. Tampered or torn Will.— Where the will is found open and tampered with, or torn, the following provisions shall apply:—

(a) Where the will is found cancelled and obliterated, or torn, either amidst the effects of the testator or in the possession of a third party, to such an extent that it is not possible to read the original disposition, it shall be deemed to be non-existent;

(b) Where it is proved that any person other than the testator has tampered with the will, the provisions of sections 239 and 240 which are applicable to a person who fraudulently withholds or removes the will shall be applicable to such person.

243. Presumption as to who is responsible.— Where the will is tampered with, it shall be presumed that the tampering was done by the person to whom the will was entrusted until the contrary is proved.

244. Torn Will found amidst the effects of the testator.— Where the will is found to be torn or reduced to pieces amidst the effects of the testator, the will shall be deemed to be non-existent, notwithstanding that it is possible to put the pieces together and read the disposition, unless it has already been proved that it was torn or reduced to pieces after the death of the testator or was caused by him when he was of unsound mind.

245. Wills under this Code to become operative upon death.— When a public will, printed open will or closed will is made in accordance with the provisions of this Act, the will shall become operative and executable immediately upon the death of the testator and no probate is required.

246. Wills made outside Goa.— A will is valid as to form if it is made in conformity with the law of the place of making at the time it was made.

CHAPTER XIII

Management of the Inheritance : Head of the Family

247. To whom the office of head of the family belongs.— (1) The office of head of the family belongs in order of priority to—

(a) the surviving spouse, unless the spouse does not have a share in the assets to be partitioned and does not have descendants, who are still minors, as heirs;

(b) the children, who are not under a disability, and in default of children, other descendants who are not under a disability;

(c) the other heirs, who are not under a disability.

(2) In the category of children, other descendants and other heirs, the following shall have preference:—

(a) the heirs who are living with the deceased over the others;

(b) where there are more than one in the same circumstances, the elder shall have preference.

(3) The heir, who was residing permanently in the company of the estate leaver only, shall be deemed to be the heir living with the estate leaver.

248. *When the guardian is appointed head of the family.*— Where there is no surviving spouse nor heirs referred to in section 247, the court shall appoint the guardian of the heirs under disability as the head of the family and where there is more than one group of heirs with different guardians, such guardian as is chosen by the court and, till such time there is no guardian appointed by the court, the court shall appoint provisionally a receiver from amongst the nearer relatives of the heirs under disability.

249. *Eldest of the spouses to be the head of the family.*— Where an inventory is instituted consequent upon divorce, separation or annulment of marriage, the head of the family shall, where the marriage is governed by the regime of community of assets, belong to the eldest spouse and where the marriage is governed by the regime of separation of assets, to the spouse who owns the assets; if there are any community assets, the eldest shall be the head of the family in respect thereof.

250. *Special head of the family.*— The co-heirs who on the date of the opening of the inheritance, were in possession of certain properties of the inheritance and so also the heirs who have to reconstitute gifted properties to the estate shall be deemed heads of the family in respect of such properties.

251. *Duty to initiate the inventory.*— The head of the family is duty bound to initiate an inventory where there is a co-heir who is a minor or under disability.

252. *When half of the income may be distributed.*— After the assets and liabilities have been listed in the inventory proceeding, any party may apply that half of the income of the properties which have not been bequeathed be distributed among the co-heirs taking into consideration the value which has been attributed to them; the head of the family, who fails to comply with such direction issued by the court, shall be removed forthwith and shall be liable to pay compensation for the damage caused.

253. *Rights and duties of the head of the family.*— The head of the family, as manager of the estate, shall receive the fruits and profits of the properties in his possession and shall meet the normal liabilities and shall have the duty to render accounts in case the usufruct of the said properties does not belong to him.

However, the head of the family shall not alienate any properties of the estate other than fruits or other things which cannot be preserved without fear of deterioration.

254. *Head of the family when there are only legacies.*— Where the inheritance is distributed by way of legacies only, the most benefited shall be the head of the family; and if all circumstances are equal, the eldest shall have priority.

255. *When the head of the family seeks exemption or is removed.*— (1) If the persons

referred to in the preceding section of this Chapter, seek exemption or are removed, the court shall appoint *suo motu* or on application by an interested party, the head of the family.

(2) Notwithstanding the above provisions, the parties may by mutual consent agree that the management of the inheritance and the functions of the head of the family be discharged by any other person.

256. *Concealment of assets of the inheritance by the head of the family or heir.*—

(1) The moiety holder or heir who fraudulently conceals assets of the inheritance, whether as head of the family or not, forfeits in favour of the heirs or co-heirs, as the case may be, the right he may have to the concealed assets.

(2) The person who conceals assets is deemed to be merely in custody of those assets and the Court may order him that they be handed over to the head of the family.

257. *Fraudulent description.*— The head of the family who fraudulently describes credits, rights or encumbrances which are founded on sham, false or falsified documents of title, shall be liable to pay damages for the injury caused and he shall be criminally liable.

258. *Fraudulent concealment of documents.*— The head of the family, who conceals fraudulently documents of title necessary to take cognizance of the nature of, or of the encumbrances on, the partible assets, shall be liable for the losses caused by such omission.

Executor

259. *Executor appointed by the testator.*— The testator may appoint one or more persons to carry out his will in whole or in part. Such persons are called executors.

260. *Who may be executor.*— Only a person who has the capacity to contract may be appointed as executor.

261. *Appointment of executor by court.*— The court may appoint an executor when the heirs do not agree on the choice of the executor. Where there are minors, interdicted

or absent heirs, any interested party may apply to the court that an executor be appointed. The applicant shall disclose who are the other interested parties and he may propose the person who in his view is best qualified for being appointed as an executor.

262. *Where the executor declines to accept the office.*— The appointed executors may decline to accept the appointment. In this event, however, if a legacy is left to the executor as compensation for discharging the functions of executor, he shall not be entitled to claim the legacy.

263. *Time limit to decline appointment.*— The appointed executor who is not willing to accept the appointment, shall, within thirty days from the knowledge of the will, so inform, by registered post, the Special Notary of the place where the inheritance opens with a copy to any one of the beneficiaries under the will. In case of his failure to inform the authorities mentioned above, he shall be liable to pay damages.

264. *When the executor may resign.*— The appointed executor who has accepted the office, may quit the office upon showing just cause such as disability due to illness, absence for a long period or incompatibility with the discharge of a public office and upon obtaining an order of the court competent in terms of section 373. Such Order shall be made after hearing the parties. In case he quits the office without order of the competent Court, he shall be liable to pay damages.

265. *Office of the executor is gratuitous.*— The office of the executor is gratuitous, unless remuneration is provided for by the testator, in the will.

266. *Impediments to become executor.*— Where there is an impediment which does not permit the person appointed as executor to assume the office or the executor is discharged, the heirs shall carry out the purpose of the will and they shall be subject to the following provisions:—

(a) where the hereditary shares are not equal, the office shall vest in the heir who is the most benefited;

(b) where the hereditary shares are equal, the parties shall appoint the executor from amongst them, and, in case of disagreement or when one of them is a minor or an interdict or an absent person, the competent Court shall appoint one amongst them.

267. *Powers of the executor.*— The executor shall have such powers as the testator may have conferred upon him in accordance with law. However, he shall cease to function as such upon the appointment of the head of the family in an inventory proceeding. He shall nevertheless be entitled to intervene in the inventory proceeding to bring to the notice of the court the directions contained in the will.

268. *General duties of the executor.*— Where the testator does not specify the duties of the executor, they shall be as follows:-

(i) to make arrangements for the funeral of the testator and to pay the respective expenses and religious ceremonies in accordance with the wishes of the testator or, where the will makes no provision in this regard, according to the customary usages;

(ii) to cause registration of the closed will, if it is in his custody, before the competent authority, within thirty days from the date of the knowledge of the death of the testator;

(iii) to carry out or execute the testamentary dispositions and to defend, if necessary, their validity in or outside the court;

(iv) to allow the parties to take inspection of the will, if it is in his custody, and to allow true copies thereof to be taken, when so requested.

269. *Duty to initiate inventory.*— (1) (a) The executor shall institute inventory proceeding where there are minors, interdicted or absent heirs and legatees.

(b) Where the testator has empowered the executor to utilize the income of a certain part of the estate for the benefit of a charitable or public utility foundation or trust or institution, which is intended to be created by the will or which does not have a legal personality, the executor shall initiate inventory proceeding and apply for the sale of such part of the estate by public auction.

(2) The procedure laid down in clause (b) of sub-section (1) shall not be applicable where the inheritance or legacy was left for the aforesaid purpose to an institution with legal personality or a trust already in existence.

270. *When the testator leaves forced heirs.*— Where the testator leaves forced heirs, the testator shall not authorize the executor to take charge of the estate. However, the testator may direct that the forced heirs shall not take charge thereof, unless inventory proceeding are instituted and the executor is served.

271. *Where the testator does not leave forced heirs.*— (1) Where the testator leaves heirs who are not forced heirs, he may authorize the executor to take charge of the estate but he shall not exempt the executor from instituting inventory proceeding.

(2) Such heirs may prevent the executor from taking charge of the estate by providing to him the necessary amount to meet the expenses for the discharge of his functions.

(3) Where there are no funds in the estate sufficient to meet the expenses of the executor and the heirs are not willing or are unable to advance the necessary amount, it shall be lawful for the executor to cause the sale of movables and, if the amount realized is not sufficient, to cause the sale of one or more immovables after hearing the heirs; if any of the heirs is a minor, absent person or an interdict, the sale of the movables or immovable shall be done by public auction.

272. *Time limit to carry out the Will.*— (1) When no time limit has been fixed in the will

for its execution, the executor shall carry it out within one year from the date on which he assumes office or from the date on which the litigation, if any, with regard to the validity or nullity of the will, has come to an end.

(2) However, it shall always be lawful for the executor to supervise and take care of the execution of the dispositions which have not been carried out and to apply to the Court for such preventive reliefs as may be necessary.

(3) When the income is to be utilised for the benefit of a charitable or public utility institution or trust, the executor shall continue the execution of the will till such time as may be necessary to carry out the legacy or legacies, if the testator has so directed, subject to section 269.

(4) Where the executor has failed to discharge his duties within the time fixed, he shall forfeit the remuneration left to him, and the will shall be executed, by the persons who have the duty to execute it, as if no executor has been appointed.

273. *Joint executors.*— (1) Where more than one executor has accepted the office and later on one or more of them have abstained from participating in the execution of the will, the execution carried out by the others shall be valid; but all of them shall be jointly liable for the assets of the estate of which they have taken charge.

(2) Where the executors who have accepted the office do not arrive at a consensus on the manner in which the will is to be executed, the executorship shall lapse and the will shall be executed by the person who has the duty to do so as if no executors had been appointed.

274. *Duty to render accounts.*— The executor shall render accounts of his management to the heirs or their lawful representatives. For this purpose, the executor may, if necessary, file an application to the competent court. Where inventory proceedings are instituted, such an application shall be filed in the same proceeding.

275. *Office of executor not transferable or heritable.*— The office of the executor is neither transferable nor heritable nor can it be delegated.

276. *Accretion of remuneration.*— Where the testator has bequeathed to joint executors, the part of the remuneration of the executor who has been discharged or of the one who is unable to accept the office shall be added to the remuneration of the others.

277. *Expenses of the executor.*— The expenses incurred by the executor in the discharge of his duties shall be met from the mass of the inheritance. Petty expenses for which usually no receipt is issued shall be approved on the basis of an affidavit of the said executor.

278. *When the executor is guilty of deceit or fraud.*— The executor who is guilty of deceit or fraud in the discharge of his duties shall be liable to pay damages and may be removed from his office by order of the court at the instance of the parties. The procedure for removal is provided in section 384.

CHAPTER XIV

Partition

279. *Effects of partition.*— The partition of the inheritance in the inventory proceeding and made in respect of which there has been no objection, confers on the parties exclusive ownership of the properties respectively allotted to them, as against other parties to the proceeding.

280. *Consequences of co-heir and moiety holder being deprived of possession.*— (1) The co-heirs and moiety holder shall be mutually liable to indemnify the co-heir or moiety holder, who is deprived of possession of the property allotted to him, by a person having better title thereto.

(2) Such liability ceases when there is agreement to the contrary or if the

dispossession takes place due to the fault of the person dispossessed or due to a cause which has arisen subsequent to the partition.

(3) The dispossessed person shall be indemnified by the co-heirs and moiety holder in proportion to their shares but where any of them has become insolvent, the remaining parties shall be liable for his share in the said proportion, after deducting the share of the dispossessed party.

281. *Limitation for suit for damages.*— A suit for recovery of the compensation set out in the foregoing section shall be filed within a period of three years, and other provisions of the Limitation Act, 1963 (Central Act 36 of 1963) shall be applicable.

282. *Partition done out of court.*— (1) An inheritance can be partitioned by a deed out of court where the mandatory inventory is not required under the provisions of this Act.

(2) No partition of an inheritance shall be done out of court unless it is preceded by a deed of declaration of heirship.

283. *Rescission in case of out of court partition.*— Partitions of inheritance made out of court may be rescinded only on the grounds on which contracts may be rescinded.

CHAPTER XV

Supplement Provisions

284. *Sale of share in undivided inheritance: right of pre-emption.*— The moiety holder and the co-heir shall have the right of pre-emption when any share in an undivided inheritance is sold to a stranger, without prior notice to him.

285. *Notice to moiety holder or co-heirs.*— A co-heir or a moiety holder who intends to sell his respective share or moiety in an undivided inheritance to strangers may, however, give notice of the intended sale by instituting inventory proceeding to enable the parties entitled to pre-empt to exercise their right in accordance with section 396.

286. *Sham sale.*— (1) A sale, whether made directly or through an intermediary, to defeat the provisions imposing restrictions on the power to transfer shall be null.

(2) When the sale is made by the spouse of the person who is incompetent to acquire or by a person whose presumed heir he is or when made with a third party who has agreed with the person who is incompetent to acquire that he will transmit the benefits in favour of the latter, such person is deemed to be the intermediary.

287. *Creation of easement.*— (1) Where any immovable property is divided by metes and bounds in the inventory proceeding and it is necessary to create an easement, such easement of necessity shall be created and recorded in such proceeding.

(2) Nothing shall prevent the parties from creating an easement by a separate deed with the consent of parties after the inventory is concluded.

(3) Where the provisions of sub-section (1) are not followed, the respective owner of the landlocked property may file a suit for creation of such easement and the compensation payable to the servient owner as well as the costs of the suit shall be shared by all the parties to inventory proceeding.

(4) Where an inheritance is partitioned amicably by a deed and it is necessary to create an easement but such easement is not created in the deed, the respective owner of the landlocked property shall have the right to file a suit as provided in sub-section (3).

Usufruct

288. *Definition of usufruct.*— Usufruct is a right to full enjoyment of an asset or a right for a specified period, without changing its form or substance.

289. *Constitution of usufruct.*— Usufruct may be constituted by a registered agreement, by will or by law in favour of one or more

persons simultaneously or successively, provided they are living at the time the right of the first usufructuary becomes effective.

290. *Extinguishment of usufruct.*— (1) Unless provided to the contrary, the usufruct constituted by agreement or by will in favour of several persons jointly, extinguishes upon death of the last surviving usufructuary.

(2) Without prejudice to the provisions hereinabove, usufruct shall not exceed the life of the usufructuary; where it is constituted in favour of a body having legal personality, the usufruct shall last for a period of 30 years only.

291. *Right of the usufructuary.*— The usufructuary may use, enjoy and manage the thing or right as a prudent man would do.

292. *Determination of usufruct.*— The value of the usufruct, use and habitation shall be determined by multiplying the annual income by ten, but the value may be enhanced or decreased depending upon the probable duration of the respective rights.

293. *Emphyteusis.*— (1) Emphyteusis is a conveyance whereby the owner of any property transfers the beneficial ownership (dominium utile) to another and the latter binds himself to pay him annually certain determined periodic sum, which is known as emphyteutic fee. Upon such conveyance, the owner of the property shall be the owner of the direct domain only and the transferee shall be the beneficial owner.

(2) Emphyteusis is hereditary.

(3) The beneficial owner shall have the right not only to enjoy but also to alienate, mortgage, gift and exchange the property.

(4) The owner of the direct domain shall have the right to receive the emphyteutic fee only.

294. *Divisibility of the emphyteusis.*— (1) The property granted in emphyteusis is not divisible into plots, unless the owner of the direct domain consents to it.

(2) The partition of its value amongst the heirs is done by estimation, and the emphyteusis shall be allotted to one of them in accordance with their agreement.

(3) Where there is no agreement, the emphyteusis shall be put to licitation.

(4) Where none of the heirs is willing to accept the allotment of the emphyteusis, the property shall be sold and the proceeds shall be divided amongst the heirs.

(5) If the owner of the direct domain consents to the division into plots, each plot shall be a separate emphyteusis and the owner of the direct domain may demand the respective emphyteutic fee of each of the beneficial owners according to the allotment done.

(6) The division and the allotment shall not be valid unless done by a registered document wherein the owner of the direct domain gives his consent. In this event, the emphyteutic fee payable by each heir may be increased on account of the trouble that the owner of the direct domain has to take to collect the divided emphyteutic fee.

(7) Where the emphyteusis is divided without the written consent of the owner of the direct domain, each of the plots shall be liable for the entire emphyteutic fee.

295. *Acts contrary to law.*— Any act which is contrary to law, whether prohibitory or mandatory, shall be null and void unless such law provides otherwise.

Such nullity may, however, be cured when the interested parties give their consent provided that the law which has been contravened is not relating to public order or public policy.

PART III

Special Notaries

CHAPTER XVI

Establishment of District Special Notaries and Special Notaries

296. *District and Sub-Districts.*— (1) For the purposes of this Act, the State Government

shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such districts and sub-districts.

(2) The formation of districts and sub-districts and every alteration of such limits shall be notified in the Official Gazette.

(3) Every such alteration shall take effect on such future date as may be mentioned in the Notification.

297. *Special Notaries.*— The State Government may appoint in each District one District Special Notary and in each sub-district one or more Special Notaries. The Special Notary shall exercise the powers conferred on him by this Acts within such sub-district or sub-districts as the State Government may by order determine. The State Government may also appoint joint Special Notaries in any sub-district or sub-districts, whenever necessary.

298. *Offices of the District Special Notary and the Special Notary.*— The State Government shall establish in every district an office to be styled as the office of the District Special Notary and in every sub-district an office or offices to be styled as the office of the Special Notary or the offices of the joint Special Notaries, as the case may be.

299. *Absence of District Special Notary.*— When any District Special Notary is absent on leave or otherwise the State Special Notary shall make necessary arrangements of substitution, either directing any other District Special Notary or any Special Notary to act as such District Special Notary during the absence, unless the State Government makes an appointment in this regard. However, where any Special Notary is directed to act as District Special Notary, he shall not hear appeals against his own orders.

300. *Absence of Special Notary.*— When any Special Notary is absent, or when his office is temporarily vacant, the District Special Notary shall make the necessary arrangement of substitution directing any other Special

Notary to act as such Special Notary during the absence, unless the State Government makes appointment in this regard.

301. *Seal of the District Special Notary and the Special Notary.*— The several District Special Notaries and the Special Notaries shall use an embossed seal bearing the following inscription “The seal of the District Special Notary of _____ District” or “the Seal of the Special Notary of _____ Sub-District”.

302. *State Special Notary.*— The State Government may appoint a State Special Notary for the State of Goa, who shall have powers of superintendence and control over the District Special Notaries and the Special Notaries.

303. *Qualifications.*— A person shall not be qualified to be a State Special Notary, District Special Notary and Special Notary, unless he is a graduate in law and possesses such other qualifications and experience as may be prescribed.

CHAPTER XVII

Functions of the Special Notary

304. *Function of the Special Notary.*— The function of the Special Notary is to give authenticity to the instruments which he is empowered to draw in accordance with law.

305. *Status of the Special Notary.*— The Special Notary is a public officer appointed by the Government to draw authentic instruments.

306. *Evidentiary value of the documents drawn by the Special Notary.*— The instrument recorded by the Special Notary constitutes full proof of the veracity of the act, done by him and the veracity of the facts which have occurred in his presence or which he has certified to be true and was competent to so certify, in relation to the parties and their successors-in-interest who have intervened in such instrument, unless it is proved that the document itself is false.

307. *What instruments are to be drawn only by way of authentic document.*— The instruments mentioned below shall be proved only by authentic document and no other evidence is admissible to prove them:—

- (a) Public will;
- (b) Record of printed open will;
- (c) Record of approval of the closed will;
- (d) Record of the opening of the closed will;
- (e) Instrument of consent to the will by the spouse of the testator or the testatrix;
- (f) Instrument of Revocation of will;
- (g) Instrument of rehabilitation of a person unworthy to succeed;
- (h) Instrument of renunciation of inheritance;
- (i) Instrument of declaration of heirship;
- (j) Instrument of ante nuptial agreement;
- (k) Deed of adoption under the law in force in Goa;
- (l) Special Power of Attorney for acts to be done under this Act;
- (m) Instrument of declaration of the option exercised under clauses (c) and (d) of sub-section (4) of section 1.

CHAPTER XVIII

Books, Indices and Fire Proof Boxes

308. *Obligation of the State to provide books to the Special Notary.*— (1) The State Government shall provide for the office of every Special Notary, District Special Notary and State Special Notary the books necessary for the purposes of this Act.

(2) The books so provided shall contain the forms prescribed and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title page by the District Judge of the respective district court or an additional district judge nominated by him, as the case may be.

(3) The State Government shall supply to the office of the Special Notaries with a fire proof box, and shall in each sub-district make suitable provisions for the safe custody of the records connected with the State Special Notary.

(4) The State Government shall provide the embossed seals to the Special Notaries, District Special Notaries and the State Special Notary.

309. *Books to be maintained by the Special Notary and District Special Notary.*—

(1) The Special Notaries shall maintain:—

- (i) a daily register of instruments drawn under this Act;
- (ii) a register of index of wills;
- (iii) a book of Public wills;
- (iv) a register of printed open wills;
- (v) a register of approval of closed wills;
- (vi) a register of deposit of closed wills;
- (vii) a register of opening of closed wills;
- (viii) a register of return of closed wills;
- (ix) a register of rehabilitation of a person unworthy to succeed;
- (x) a register of refusal to act as executor;
- (xi) a register of record of acquiescence given by the spouses;
- (xii) a register of renunciation of inheritance, adoption, ante-nuptial agreements, revocation of wills, declaration of heirship, orders refusing to perform an act and such other acts provided under law to be performed by the Special Notary;
- (xiii) a register of Special Power of Attorney;
- (xiv) a register of declaration under clauses (c) and (d) of section 1;
- (xv) a register of plans;
- (xvi) a register of all other documents filed in his office;
- (xvii) a register of index of other instruments;
- (xviii) book of accounts of fees and stamp duty;

(2) The District Special Notary shall maintain a register of orders made in appeal against orders of the Special Notaries.

310. *Requirement of the notarial books.*— The notarial books shall have a record of their opening and closing, signed by the District Judge of the respective District Court or an Additional District Judge nominated by him, as the case may be.

311. *Indexes to be maintained.*— (1) The following indexes shall be maintained by the Special Notary:—

- (a) index of the public open will;
- (b) index of the printed open will;
- (c) index of the closed will;
- (d) index of other instruments;

(2) A copy of indexes of all wills shall be forwarded to the State Special Notary every three months by the tenth of the month following the trimester. The State Special Notary shall maintain a consolidated index in his office.

312. *Maintenance and preservation of books and other records.*— (1) The Special Notary shall preserve the books, registers, documents and their indices maintained in his office. Only where it is necessary to draw a deed outside his office on special grounds, these books can be taken out of the office.

(2) The State Government shall provide the Special Notaries with proper premises and storage equipments.

(3) All such books, registers, and documents maintained by the Special Notary shall be forwarded for preservation, after a period of 30 years, to the Director of Archives who shall be bound to preserve them by using the latest scientific methods for preservation.

(4) In case of criminal or any other investigation involving any document, a register or book maintained in the office of a Special Notary, such document, register or book shall not be taken out of his office but the

investigating Police Officer or an expert shall be allowed to take photographs of the such document for the required purpose.

(5) When in any case a court calls for any document, book or register from the office of a Special Notary before it, such document, book or register shall be returned to the Special Notary, immediately after it is examined and shall not be retained in court records.

313. *Special Notaries to allow inspection of indices and give certified copies.*— (1) Subject to the payment of fees as prescribed in that behalf, the indices maintained by the Special Notary, shall be open for inspection by any person applying to inspect the same and subject to the provisions of section 352 copies of entries in such books shall be given to all person applying for such copies.

(2) All copies given under this section shall be signed and sealed by the Special Notary and shall be admissible in evidence as proof of the contents of the original documents. The certified copy shall contain an endorsement stating the number of the will or other instrument in the index.

314. *Power of the State Special Notary and District Notary to superintend and control Special Notaries.*— (1) Every Special Notary shall perform the duties of his office under the superintendence and control of the District Special Notary in whose District the office of such Special Notary is situated.

(2) Every District Special Notary shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act, which he considers necessary in respect of any act or omission of any Special Notary subordinate to him.

(3) The State Special Notary shall have authority to issue, whether on complaint or otherwise, any order consistent with this Act which he considers necessary in respect of any

act or omission of any District Special Notary or any Special Notary subordinate to him.

Notary records that such doctor has certified that such party is in his full senses.

CHAPTER XIX

Powers of the District Special Notary and Special Notary

315. *Powers of the Special Notaries.*— The Special Notaries shall have powers to draw authentic documents such as (a) public wills, (b) record of printed open wills, (c) instruments of consent to the will by the spouse of the testator testatrix, as the case may be, (d) instruments of renunciation of inheritance, (e) record of approval of the closed wills, (f) ante nuptial agreements, (g) deeds of declaration of heirship, (h) adoption deeds and (i) such other acts which the Special Notary is authorized to perform by law.

316. *Power to administer oath.*— The Special Notary shall have powers also to administer oath to a person, whenever necessary, in connection with acts performed by him.

317. *Incompetence to act.*— The Special Notary shall not act in instruments and deeds where he or his spouse is a party or attorney or representative of a party or person having interest in the act or transaction; and also where any of the ascendant, descendant of the Special Notary, or brother and relative in the same degree or of his spouse is a party, interested party, attorney or representative of any party or person having an interest in the instrument or transaction.

318. *Duty of the Special Notary.*— The Special Notary shall be bound to render services, when requested, which are within his competence.

319. *When the Special Notary shall refuse to perform the act.*— The Special Notary shall refuse to perform the act:—

(a) If such act is forbidden by law;

(b) If the Special Notary doubts the mental faculties of any party, unless one of the witnesses be a doctor and the Special

320. *Refusal to perform an act.*— (1) Order of refusal to record reasons.— When the Special Notary refuses in writing to perform an act, which he is empowered to do, he shall make an order of refusal expeditiously and record his reasons for such order in his Book No. IX and endorse the words “refused to draw” on the draft document, if any, is presented, and, on an application made by any person who has an interest in causing it to be drawn, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) *Application for reconsideration.*— The aggrieved party may call upon such Notary to reconsider his refusal.

(3) *Duty to forward to the District Special Notary the application for re-consideration.*— In the event the Special Notary does not reconsider the refusal within forty-eight hours, then he is bound to send the application for reconsideration to the District Special Notary as Appellate Authority, along with the respective documents and his report wherein he shall record reason for his refusal to perform the act. The District Special Notary shall give his decision affirming, reversing or altering such order within 3 days.

321. *Order of the District Special Notary.*— (1) If the order of the District Special Notary direct the special notary to draw the document and the party appears before the Special Notary within 30 days from the date of the making of such order, the Special Notary shall comply with it.

(2) Every District Special Notary rejecting the appeal shall make an order and record his reasons for such order in his Register of orders passed in appeal; and, on an application made by any person who has an interest in causing it to be drawn, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(3) No appeal shall lie from an order of the District Special Notary.

322. *Suit in case of party being aggrieved by order of the District Special Notary.*— Any person aggrieved by an order of the District Special Notary may file a suit in the civil court having jurisdiction over the area where the office of the District Special Notary is situate for a decree directing the Special Notary to draw the document.

CHAPTER XX

Authentic Instrument in General

323. *Who may be witnesses identifiers and certifiers.*— (1) The following persons cannot be witnesses or identifiers or certifiers:-

- (a) persons who are not in their full senses;
- (b) minors;
- (c) deaf, dumb and blind;
- (d) the Special Notary and his spouse or their ascendants, descendants, brothers and sisters, brother-in-law, sister-in-law and his staff;
- (e) persons directly interested in the deed;
- (f) ascendants in the acts of the descendants and vice versa;
- (g) father-in-law or mother-in-law in the acts of the son-in-law or daughter-in-law and vice versa;
- (h) husband in the acts of the wife and vice versa;
- (i) husband and wife together.

(2) A Special Notary may accept persons as witnesses or identifiers who are either known to him or who prove their identity by means of any official document such as voters identity card, PAN card, multi-purpose National Identity card.

324. *Requisites of authentic documents.*— (1) The requisites of the authentic documents are as follows:—

- (i) the hour, date, month, year and the place where the document was drawn or signed when drawn outside the office and the statement that the Special Notary went there at the express request of the party,

- (ii) full name of the Special Notary, his designation as such Special Notary, and the address of his office;

- (iii) full names, age, marital status, professions and addresses of the parties, and of their attorney or representatives, if the latter intervened directly in the deed;

- (iv) a reference to the powers of attorney and other documents which prove they are attorneys or representatives, so also other documents relating to the acts or which are part and parcel of the latter, with the dates and other details which identify them. The power of attorney executed abroad shall be countersigned by the Indian Diplomatic Agent or the Consular services and shall be duly stamped by the Competent Collector in Goa;

- (v) the acknowledgement of the identity of the parties from his personal knowledge or from the statement of the identifiers who know them;

- (vi) reference of the oath taken by the interpreters and the reasons which required their intervention and the manner in which the interpreters ascertained the wishes of the parties and explained to them the contents of the documents;

- (vii) full names, age, status, professions and address of the witnesses, interpreters and identifiers and also of the persons who read the documents at the request of the parties;

- (viii) the statement of the party that he does not know to sign or cannot sign;

- (ix) reference to the fact that the Special Notary has read aloud the document to the parties in the simultaneous presence of the parties, the witnesses and other persons who have intervened and of the reading by the interpreter or by any of the parties or any other person at their request, when compulsory;

- (x) the errata memo describing the corrections, interlineations, alterations,

words struck through or if any erasures before the signatures of parties, witnesses and Special Notary;

(xi) signatures of the parties at the end of the text when they know or can sign and of the witnesses and other persons who have intervened;

(xii) signature of the Special Notary which shall be made at the end of the document;

(xiii) the value of the notarial stamp affixed shall be mentioned in the instrument;

(xiv) the instrument shall be recorded in the language of the court. Where the party does not know such language the page where the instrument is written shall be divided into two columns and in left column the instrument shall be recorded in the language of the court and in the right in the language known to the party. The translator shall intervene in the instrument and shall solemnly declare that the translation is true and correct.

The instrument shall be recorded continuously, without any blank space or blank line.

(2) The originals of powers of attorney given by the parties to the attorneys for intervening in a Notarial act have to be produced before the Special Notary who shall place them or certified copy thereof on record in his office.

325. *How instruments are to be recorded.*—

(1) All instruments and deeds, including wills, endorsements and approvals shall be drawn by the Special Notary in black ink and all words shall be recorded in extenso and figures in words.

(2) Drawing of the instrument and deed shall be in the presence of two witnesses who shall put their usual signatures at the end of such deed or instrument.

(3) The identity of parties in all instruments and deeds including the wills, may be done by any official identity card such voters identity card, PAN card, multi-purpose National Identity card or may also be done by witnesses

or on the personal knowledge of the Special Notary.

(4) Parties who know to write shall put their signatures as usual and also shall affix their left hand thumb impression. If there be no left thumb the impression of right thumb shall be affixed and in the absence of the right thumb also the impression of any other finger, shall be affixed and the finger used shall be specified by the Special Notary. In case affixation of impression of any finger is not possible or the party is not able to put his signature, the Special Notary shall make mention thereof in the deed and the deed shall be deemed valid.

(5) The Special Notary may appoint, at the expense of the party, an interpreter or translator when he requires such assistance.

326. *Dumb and deaf.*— (1) Dumb or deaf and dumb persons who know or can write shall state in writing in the document, before their signatures, that they have read the deed and that they admit or acknowledge that the document is in accordance with their wish.

(2) In case a party is dumb or is deaf and dumb who does not know or cannot write, the signs with which he expresses his intentions should be understood by the witnesses and further an interpreter shall intervene in the acts. This fact shall be recorded in the deed.

(3) When one of the parties is blind, the document shall be read twice, once by the Special Notary and the second time by a person appointed by the party. This fact shall be recorded in the deed.

(4) The person appointed by the party shall intervene in the deed and solemnly declare that the interpretation is true and correct.

CHAPTER XXI

Public Open Will

327. *Identification of the testator and his condition.*— The Special Notary as well as the witnesses should know the testator or be able to certify his identity and further, the Special Notary shall satisfy himself that the testator is in his perfect sense and free from coercion.

328. *Place, time and date of the Will.*— The will shall be dated; indicating therein the place, hour, day, month and year and it shall be read out aloud in the presence of the said two witnesses, by the Special Notary, and by the testator, if he so wishes, and signed by all.

329. *When a plan is attached to the Will.*— Where the testator wishes to attach a plan to the will, or deed of consent, the Special Notary shall make an endorsement on the place recording the name of testator, the book number, the page and date of the will. The Special Notary shall also state at the end of will, the file number and serial number of the plan. The plan shall be dated and signed by the testator, the witnesses and the Special Notary.

330. *When the testator does not know or is unable to write.*— When the testator does not know to write or is unable to write, the Special Notary shall so record in the will .

331. *When the testator is deaf.*— When the testator is entirely deaf but knows to read, he shall read his will, and, when he does not know to read, he shall appoint a person to read the will on his behalf, and in either case, in the presence of two witnesses. The person appointed shall intervene in the instrument.

332. *Formalities to be complied without break.*— All the formalities in drawing a will shall be complied with without interruption in the presence of two witnesses and the Special Notary shall state faithfully the manner in which the formalities were complied with.

CHAPTER XXII

Printed Open Will

333. *Printed open will.*— (1) (a) A testator who knows to read, may opt to present to the Special Notary a computer generated printout of the operative part of his will on a standard paper of the size 29.7 cms. x 21 cms. entitled 'open will' and declare before the Special Notary that the printout contains his last wish in the presence of two credit worthy

witnesses, who shall identify the testator, and certify that the testator is in his perfect senses and free from coercion.

(b) The will shall be printed in double line spacing on one side of the paper only leaving a margin of 5 cm. on left side, 3 cms. on top and the bottom and one cm. on the right side of the paper. The print shall be continuous without break between words and numbers shall be written in words

(c) After the title, the testator shall set out his full name, occupation, marital status and description which shall contain the names of both the parents, his age and place of residence.

(d) All the open wills brought before the Notary, until they are preserved in a form of a bound book, as provided in sub-section (7), shall be maintained in a provisional file. In the same file, all the wills so presented shall be kept as per the serial order of its presentation and their pages numbered serially.

(2) In the presence of the said witnesses, the Special Notary shall verify from the testator whether the will presented by him expresses his last wish according to his intention and whether the testator is in his perfect senses and free from coercion. The Special Notary shall, thereupon, record on the will the continuous numbers of the pages which it bears in the file maintained for preserving open wills. Every page shall be signed by the testator, and the two witnesses to the will just above the first line and below the last line in the presence of the Special Notary. The Special Notary shall then make a record thereof immediately next to the signatures on the last page of the will and it shall continue without interruption on the same page and on the subsequent pages.

(3) The record to be made by the Special Notary in the presence of the testator and the witnesses shall contain the following:—

(a) that the will was presented by the testator in person and that the testator declared that it was his last wish;

(b) that all the pages of the will were signed by the testator and the witnesses in his presence;

(c) state the number of pages the will contains;

(d) make mention to any blot, interlineations, correction or marginal note in the will;

(e) that the testator was identified by witnesses;

(f) that the testator was in his perfect senses and wholly free from coercion;

(g) the number which the pages will bear in the file containing open will.

(4) The Special Notary shall read aloud in the presence of the witnesses the will presented by the testator and the record made, and after specifying the place, date, month and year the record shall be signed by the testator, the witnesses and the Special Notary.

(5) The Special Notary shall then affix a passport size photograph of the testator, supplied by the testator, just below the record made by the Special Notary and he shall also sign across the photograph and certify that the photograph is of the testator immediately after all the formalities are completed, the Special Notary shall issue a certified photostat copy of the will with the record made by him, to the testator and then shall file the will in the file maintained for the purpose.

(6) The Special Notary shall enter the particulars as provided in sub-section (2) above and of the date of the open will in a book maintained for the purpose.

(7) At the end of every 200 sheets, the District Judge of the concerned district shall initial all the pages of the wills contained in the file and ensure that the sheets are bound in a book.

(8) The Special Notary shall reject the printed open will presented by the testator if the said will is not written in the language of

the court or in a language commonly known in the district or is written in a language not known to the Special Notary. In this event, the testator may request the Special Notary to draw a public will.

CHAPTER XXIII

Closed Will

334. *Presentation of closed will and approval by the Special Notary.*— (1) The testator shall present the closed will to a Special Notary in the presence of two witnesses and declare that the disposition is his last will.

(2) Thereafter, in the presence of the said witnesses, the Special Notary, after having a look at the will but without reading it, shall draw a record of approval. The record shall be drawn immediately next after the signature on the will and shall be continued without interruption on the same page and on the subsequent pages.

(3) The Special Notary shall draw a record stating as follows:—

(a) whether the will is written and signed by the testator;

(b) whether it is initialled by the person who has signed it;

(c) the number of the pages of the will;

(d) whether it has or does not have any blot, interlineations, corrections or marginal notes;

(e) whether the testator was identified;

(f) whether the testator was in his perfect senses and wholly free from any coercion;

(g) whether the will was presented by the testator in person in the manner required by law.

(4) The record of approval shall be read, dated and signed in conformity with the provisions of the preceding sections 324 and 325.

(5) Thereafter and in the presence of the same witnesses the Special Notary shall put the will in a cover and seal it and draw up on the external side of the cover, a note giving the name of the testator whose will is sealed.

335. *Record of the approval of the closed will.*— The records of approval of closed wills shall be made in the respective book. It shall contain the details of the place, the day, month and year, when the record of approval was made and the names and addresses of the testator and the witnesses.

336. *Failure to comply with formalities.*— (1) A closed will in respect whereof the above mentioned formalities have not been complied with, shall not take effect and the Special Notary shall be liable to pay damages and be subject to major penalty by disciplinary proceeding.

(2) Failure to record the number of pages of the will and whether it has any blot, interlineations, correction or marginal note, shall invalidate the will, provided that it has in fact been initialled and it does not have any blot, interlineations, correction or marginal note.

337. *Delivery of the closed Will.*— Once the will is approved and closed in a cover, it shall be delivered to the testator and the Special Notary shall enter in his book a note recording the place where, and the day, month and year, when the will was approved and delivered.

338. *Custody of the closed Will and its deposit with the Special Notary.*— (1) The testator may keep the closed will with himself or hand it over to a person of his confidence or deposit it in safe custody of the Special Notary.

(2) The testator who wishes to deposit his will in any Special Notary's office, shall hand it over to the Special Notary and the Special Notary shall make a record of deposit or cause such record to be drawn. The record shall be signed by him and the testator, in the respective book.

(3) On receiving such cover, the Special Notary, if satisfied that the person presenting the same for deposit is the testator or his agent, shall record in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(4) The Special Notary shall then place and retain the sealed cover in his fire proof box.

339. *Who may deposit the Will.*— The will may be presented and deposited through any attorney, in which case, the Power of Attorney shall be annexed to the will.

340. *Special power of attorney for return of the Will.*— Such special power of attorney shall be drawn by any Special Notary and signed by two witnesses in the concerned book.

CHAPTER XXIV

Opening of the Closed Will

341. *Formalities to open a closed Will.*— (1) The closed will shall be opened or made known in the following manner.

(2) After the death of the testator has been verified, or where an absent person has left a will, if the closed will is in the possession of a private person, or it is found amidst the effects of the deceased, it shall be taken to a Special Notary who, in presence of the presenter and of two witnesses, shall cause a record to be drawn of the opening of the will. The record shall state in what condition the will was when it was presented and whether it is or it is not in the condition described in the record which was drawn when the will was closed.

342. *Proceedings on death of the depositor.*— (1) If, on the death of the testator who has deposited a sealed cover under section 338, an application be made to the Special Notary who holds it in deposit to open the same, and if the Special Notary is satisfied that the testator is dead, he shall in the applicant's presence

and of two witnesses, open the cover, and at the applicant's expense cause the contents thereof to be copied into his Book No. VI.

(2) When such copy has been made, the Special Notary shall re-deposit the original will.

343. *Book of record.*— The record mentioned in the preceding section shall be written in a book, the pages whereof shall be numbered, initialled and at the end signed by the District Special Notary.

CHAPTER XXV

Registration of the closed Will after opening

344. *Registration of Will.*— (1) Once the record of the opening of the will is recorded in the book, the Special Notary shall cause the will to be registered by copying in extenso in an appropriate book by making a original note signed by the same, the Special Notary, stating how it was opened and registered and whether any thing suspicious was noticed or not.

(2) After the will is opened, all its pages shall be initialled by its presenter or by the interested parties present, by witnesses and by the Special Notary.

(3) The original of the will shall, thereafter, be kept in the office of the Special Notary in safe custody in charge of the Special Notary who shall be responsible for it.

345. *Withdrawal of sealed cover deposited under the preceding section.*— If the testator who has deposited the sealed cover under the preceding section wishes to withdraw it, he may apply either personally or by duly authorized agent, to the Special Notary who holds it in deposit and such Special Notary, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly. The will shall be returned to the testator by following the formalities laid down for the deposit of the will. A record shall be made in Book No. VII.

CHAPTER XXVI

Instrument of Declaration of Heirship

346. *Declaration of heirship.*— (1) After the succession opens, and the law does not require that mandatory inventory proceedings be instituted to partition the inheritance, heirship may be proved by a deed of declaration of heirship drawn by the Special Notary.

(2) Three persons and at least one of the interested parties shall have to declare on oath before the Special Notary that the interested party or parties named by them are the only heir or heirs of the deceased. If such deceased person was married, the name of the spouse shall also be disclosed and whether the spouse is surviving or has expired. The interested party shall also declare in the act whether the value of the inheritance exceeds Rs. 10 lakhs or not shall disclose the names of the spouses of the heirs, if any.

(3) The declarants shall produce the following documents:—

(a) death certificate of the deceased;

(b) will or gift deed *mortis causa*, when the succession is founded on such document;

(c) document to prove the relationship of the heir or heirs to the deceased;

(4) Where a party is unable to produce a birth certificate, death certificate or a marriage certificate issued by the authorities, the party may produce an order or decree of the court certifying such birth, death or marriage or a certified copy issued by an institution maintaining such records.

(5) When all the interested parties are abroad, a constituted attorney with special powers may make the declaration required under sub-section (2).

(6) A person, who under the provisions of this chapter is not competent to be a witness and a person who is a successor of the presumed heir, shall not be competent to be a declarant.

(7) If the declarants or the interested party or parties or their attorneys, are found to have knowingly made a false declaration, with regard to the particulars required under sub-section (2), they shall be liable for penal action under section 191 and 199 of the Indian Penal Code (45 of 1860).

(8) The fact that any person has been brought on record in Court proceedings other than inventory proceedings as legal representative of the deceased, shall not amount to a declaration of heirship.

(9) A deed of declaration of heirship shall be sufficient evidence for the purpose of:—

(i) mutation;

(ii) transfer of shares;

(iii) withdrawal of money from a bank or other financial institution where the deposit does not exceed Rs. 50,000/-. Provided that where there is only one heir, there is no restriction on withdrawal of any amount from the deposit.

(10) The fee or duty on a deed of declaration of heirship shall be as prescribed, on each inheritance opened, irrespective of the number of heirs.

(11) The Special Notary recording the deed of declaration of heirship shall, at the expense of the interested party or parties, publish within 15 days, an extract of the declaration, disclosing the name and permanent residence of the deceased and the names of the interested parties and other identification particulars, in the Government Gazette. When the value of inheritance exceeds Rs. 10 Lakhs in all, such extract shall also be published in a newspaper in circulation in the locality where the deed is drawn. The Special Notary shall require the interested party or parties to advance the expenses towards the publication of the notice.

(12) Any person claiming to be an heir of the deceased who has not been named in the declaration may file a suit for declaration of

heirship and consequential reliefs. If such suit is filed, a notice thereof shall forthwith be given by the Court to the respective Special Notary or by the Plaintiff in the suit, enclosing a certified copy of the plaint.

(13) If the Special Notary has not received any notice from the Court or the Plaintiff, he shall, within 30 days of the publication of the extract, issue a certified copy of declaration of heirship, which shall contain an endorsement that no such communication of institution of any suit has been received by him.

(14) Failure to file suit under sub-section (12), shall not deprive the aggrieved party to challenge the deed of declaration within the period of limitation.

CHAPTER XXVII

Void Notarial Acts

347. *Notarial acts when void.*— (1) Notarial acts shall be void in the event of,—

(i) incompetence of the Special Notary as regards the subject and place;

(ii) failure to mention the day, date, month, year and place, however when it is possible to ascertain which is the correct date, month, year and place from the context of the documents or other material available in the office of the Special Notary, the nullity on the ground of failure to mention them shall not subsist;

(iii) absence of signature of the parties when they know to or can sign;

(iv) absence of signatures of two witnesses at least when the law does not require more;

(v) failure to identify the party;

(vi) failure to mention the power of attorney, if the act is done by the attorney;

(vii) absence of errata memo of the corrections, interlineations, dashes or erasures made.

However, words corrected, struck through or erased without errata memo which do not amount to alteration of the essential terms of the respective instrument or its context in substance, are deemed not written and do not result in nullity, provided that the intention of the testator can be gathered from the remaining part of the will. The same procedure shall be followed as regards words inserted without being initialled, notwithstanding that they may result in alteration of the meaning of the text.

(viii) absence of the signature of the Special Notary.

(2) Where a disposition is made in favour of the witnesses, certifiers or interpreters who have intervened in public wills or in the record of approval of sealed wills, only such disposition shall be void.

(3) Any act performed by the Special Notary contrary to section 317 shall be void. However, public wills and records of approval of closed wills shall be excluded therefrom; in such cases, of nullity shall be restricted to dispositions made in favour of persons referred to in section 317.

CHAPTER XXVIII

Validation of Notarial Acts

348. *Validation of Notarial Acts.*— Notarial acts which are null on the grounds mentioned in clauses (iii), (iv) and (vi) of sub-section (1) of section 347 and which have not been initialled by the parties, may be validated by the competent court in a suit instituted for the said purpose by an interested party against the other interested parties and the Special Notary, on the following terms:—

(a) when in the circumstances mentioned in clause (iii) of sub-section (1) of section 347, it is proved that respectable persons are required by law were present;

(b) when in the circumstances mentioned in clause (iv) of sub-section (1) of section 347 the identity of the party to the instrument is proved;

(c) When in the circumstances mentioned in clause (vii) of sub-section (1) of section 347, it is proved that the deed was written in his hand by the Special Notary or by the Joint Special Notary in terms of sections 324 and 325 and a certified true copy, signed by the Special Notary or by the Joint Special Notary is issued:

Provided that:

(i) Public wills or record of approval of closed wills where a mention as to the formal requirement set out in the body of this section is made, may be validated when in the respective suit it is proved that the above requirements had been complied with;

(ii) The decree validating the documents shall be endorsed in the respective deed on application of the parties or by the Special Notary *suo motu*;

(iii) Notwithstanding such validation, the Special Notary shall be liable for the losses caused and shall also be liable to disciplinary proceedings and the damages which he is liable to pay, may be determined in the above mentioned suit.

CHAPTER XXIX

Civil Liability of the Special Notary

349. *Liability to disciplinary proceedings.*— (1) A Special Notary is liable to disciplinary proceedings:—

(i) when he loses or destroys any books, registers or documents of his office or willfully allows them to be lost or destroyed;

(ii) when he refuses to perform his functions at the right time without just cause;

(iii) where his act is declared false and he is responsible for the falsification;

(iv) when he issues certified copy which is not as per the originals;

(v) when his act is declared void by a court on the ground of lack of jurisdiction of the Special Notary;

(vi) when his act is declared void by a court on the account of incapacity of the parties or their attorneys or representatives, and if he had knowledge of their incapacity at the time the act was performed;

(vii) when his act is declared void by a court for lack of competence of the witnesses and he had knowledge of such fact at the time the act was done;

(viii) when his act is declared void for non-compliance with formal requirement, on grounds other than the lack of competence of witnesses;

(ix) when his act is declared void on account of coercion, and if he had knowledge of the coercion at the time the act was performed or he was a party to the coercion;

(x) when his act is declared void on the ground that he has intentionally induced a party into a mistake.

(2) The Special Notary shall be liable to disciplinary proceedings for any act done in the discharge of his duties in cases not covered in sub-section (1), when the liability arises from a criminal proceeding.

350. *Insufficiency of stamp.*— No document or instrument including a will drawn by the Special Notary shall be invalidated on the ground that it is not duly stamped or that it is insufficiently stamped.

351. *Discretion to state the provision and accept a draft.*— (1) It is open to the Special Notary while drawing an act, to make mention of the legal provision under which the act is done if the parties plead that such mention would better clarify their intention.

(2) It is open to the parties to submit to the Special Notary the proposed draft of the deed which they want the Notary to draw. The Notary shall draw the act in the manner shown in the proposed draft if he is satisfied that it conveys better the intention of the parties. The said draft, after being initialled

by the Notary, shall be returned to the party who gave it, unless the party desires that the same may be kept on record. Whenever such draft is kept on record, it shall be initialled by all parties who know and can initial it.

CHAPTER XXX

Certified Copies

352. *Who may apply.*— Any person may apply for certified copies of the wills, entries in the registers, instruments and documents recorded in the office of the Special Notary. However, during the lifetime of the testator, certified copies of public wills, deeds of revocation of wills, records of deposit of closed wills, records of approval of closed wills, record of open printed wills shall be issued only on the application of the testator himself or by his attorney with special powers. After the death of the testator, such certified copies shall be issued to any person upon production of the death certificate of the testator and an endorsement to that effect shall be made in the margin of the page where the records or will are written, unless such endorsement has already been made.

353. *To whom certified copy may be delivered.*— A certified copy obtained under the section 352 shall be delivered to the applicant, either in person or to his duly authorized agent.

354. *Time limit to issue certified copies.*— The Special Notary shall issue the certified copies, within a period of ten days, on payment of the prescribed fees. When an urgent certified copy is applied for, it shall be issued upon payment of such extra fees as may be prescribed, within two days.

355. *When a reference is made to other documents in the main instrument.*— When in any instruments drawn up by the Special Notary, a mention is made to a power of attorney or to a deed delegating powers or to any other document which is on record, certified copy of such document shall be issued along with the certified copy of the main instrument drawn up by the Special Notary.

356. *When a reference is made to a drawing or plan in the main instrument.*— A certified copy of a deed or instrument, in which a reference is made to a drawing or a plan which is on record, shall be accompanied by a certified copy of such drawing or plan. For this purpose, the Special Notary shall appoint an expert to prepare a copy thereof and the Special Notary shall issue the certified copy only after comparing it with the original. The fees payable to the expert shall be borne by the party applying for the certified copy, and such fees shall be fixed by the Special Notary.

357. *Manner in which certified copy is to be issued.*— (1) No certified copy shall be issued by the Special Notary leaving any blanks or containing any abbreviations or figures and all pages shall be numbered serially.

(2) The date on which and the place at which the certified copy is issued shall be recorded therein.

358. *When there are interlineations, erasures and corrections.*— Where there are any interlineations, erasures, corrections made or any line drawn in the body of the instrument, a footnote shall be recorded describing them immediately following the body of the main text.

CHAPTER XXXI

Fees

359. *Fees be fixed by the State Government.*— The State Government shall prepare a table of fees payable for the instruments drawn by the Special Notary.

360. *Publication of fees.*— A table of fees so payable shall be published in the Official Gazette and a copy thereof shall be exposed to public view in every office of the Special Notaries.

CHAPTER XXXII

Penalties

361. *Penalty for incorrectly recording, endorsing, copying, and translating documents with intent to injure.*— (1) Every

Special Notary appointed under this Act and every person employed in his office for the purposes of this Act, who being charged with drawing, endorsing, copying, or translating a document, does so in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury as defined in the Indian Penal Code (45 of 1860), to any person, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(2) Every Special Notary appointed under this Act and every person employed in his office for the purposes of this Act, who has access to the documents, books and registers maintained in his office, remove, mutilate, destroys or make any alteration thereto intending thereby to cause or knowing it to be likely that he may thereby cause injury as defined in the Indian Penal Code (45 of 1860), to any person shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

362. *Penalties for making false statements, delivering false copies or translations, false personation and abetment.*— Whoever,—

(a) intentionally makes any false statement, whether on oath, or not, whether it has been recorded or not, before any officer acting under this Act;

(b) intentionally delivers to any officer acting under this Act, a false copy or translation of a document or a false copy of a map or plan;

(c) personates another before any officer acting under this Act;

(d) abets anything made punishable under this Act,

shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

363. *Thing bonafide done or refused in his official capacity by an officer acting under this Act.*— No officer acting under this Act shall be liable to any suit or claim or demand by

reason of anything in good faith done or refused in his official capacity.

364. *Nothing so done is invalidated by defect in appointment or procedure of appointment of an officer acting under this Act.*— Nothing done in good faith pursuant to this Act by an officer under this Act shall be deemed invalid merely by reason of any defect in his appointment or in the procedure of his appointment.

CHAPTER XXXIII

Miscellaneous

365. *Ex officio powers and acts to be done after office hours.*— (1) The District Registrars and Sub-Registrars appointed under the Registration Act, 1908 (16 of 1908), shall ex officio exercise the powers and functions of District Special Notaries and Special Notaries under this Act.

(2) The State Registrar appointed in the Registration Department of the State Government shall be the ex officio State Special Notary and shall have power of general superintendence and control over the Special Notaries and District Special Notaries, unless the State Government deems it necessary to appoint a State Special Notary exclusively for performing functions as stated as above.

(3) No Special Notary shall be bound to draw any instrument beyond the normal office hours or on Sundays or on holidays, unless there is an emergency. The Special Notary shall, where he is required to work beyond the normal office hours, be paid by the person requiring such work, such over time fees as may be fixed by the Government, by notification. The Special Notary shall also be entitled to adequate police protection for his personal security and the security of the Notarial books.

PART IV

Inventory Proceeding

CHAPTER XXXIV

Types of Inventory Proceedings

366. *Mandatory Inventory.*— When a person dies leaving a surviving spouse or an heir, any

one of whom is an interdict, absent person, unknown, or minor, inheritance shall be partitioned, by instituting inventory proceeding only, which shall be called mandatory inventory proceeding.

367. *Optional Inventory.*— Where the interested parties do not fall in any of the categories mentioned in section 366, the parties may institute inventory proceeding to partition the inheritance, which shall be called as optional inventory proceeding.

368. *Inventory upon divorce, or separation or annulment of marriage.*— (1) After the divorce or separation of persons or annulment of marriage is decreed, the spouses may partition their assets by instituting inventory proceeding which shall be miscellaneous proceeding appended to the suit for divorce, separation of persons or annulment.

(2) Separation of assets in special cases – debts of spouse, insolvency and bankruptcy;

(a) Wherever any spouse seeks separation of common assets or where either spouse is declared as insolvent or bankrupt, the procedure specified in sub-section (1) shall be followed with the following modification:—

(i) the creditor of the indebted spouse or any creditor in case of insolvency or bankruptcy shall have the right to prosecute the inventory;

(ii) debts which are not proved by documentary evidence shall not be approved;

(iii) the other spouse has the right to choose the assets which shall constitute his or her moiety. If such right is exercised, notice thereof shall be given to the creditors who may object to the choice giving the grounds on which such objections are based.

(b) Where the court upholds the objection of the creditors, the court shall order that a second valuation of such assets as have not

been properly valued be done by three valuers appointed by the aggrieved spouse, the creditor and the court.

(c) When the second valuation modifies the value of the assets chosen by the aggrieved spouse, he/she may within 10 days from the conclusion of the appraisal, withdraw from the choice exercised. Thereupon, the moieties shall be allotted by draw of lots.

369. *Inventory where a party dies after allotment in Inventory proceeding which was finally disposed of.*— Where, after the partition is effected in any inventory, any interested party dies leaving no assets other than those that have been allotted in the inventory, such inheritance shall be partitioned in the same inventory proceeding that was finally disposed. The person to whom the office of head of family belongs shall take oath of office and the procedure set out hereafter shall be applicable.

370. *Inventory upon death of the surviving spouse.*— (1) Where the inventory of a predeceased spouse is concluded, the inventory on the death of the surviving spouse shall be continued in the former inventory proceeding.

(2) In the event there are additional assets in the proceeding referred to in sub-section (1), their serial number shall be in continuation of the last item in the former inventory proceeding.

(3) Where, after allotment or after the death of the surviving spouse, inventory proceeding is instituted, the assets which have been already valued in the prior inventory need not be valued again in the subsequent inventory, unless there are strong grounds to believe that their value has changed. In the event of change of value of currency, such change shall be taken into consideration. In addition to the valuation already made, due description of assets previously made shall be retained. If separate inventory is filed, the description shall be reproduced in the separate inventory.

371. *Additional partition.*— (1) Where, after the conclusion of an inventory, it is found that some assets are left out, such omission *per se* is not a ground to set aside the partition. An additional partition shall be effected of the assets left out in the same proceeding if the parties do not opt for partition by deed. In no other case, the inheritance shall be partitioned piecemeal.

(2) Where, at the time of the inventory on the death of the surviving spouse, it is found that some assets were left out in the inventory of the pre deceased spouse, such assets shall be described and partitioned in the inventory of the surviving spouse.

372. *Inventory in the event of dissolution of joint family.*— (1) When a joint family as governed by Decree dated 16-12-1880 is dissolved, the estate may be partitioned by instituting inventory proceeding and the procedure hereafter provided shall be applicable.

(2) The member of the joint family who was in the charge of management of its assets shall be the head of the family.

(3) The general rules that regulate partition among co-heirs shall be applicable to partitions amongst the members of the family.

CHAPTER XXXV

Jurisdiction

373. *Jurisdiction.*— (1) The court having jurisdiction over the place where the succession opens is competent to entertain inventory proceeding for—

(a) partition;

(b) declaration of a person as heir or representative of the deceased.

(2) The place of the opening of the succession shall be determined as follows:—

(i) If the deceased had a permanent residence in the State of Goa, the succession opens at the place of his permanent residence;

(ii) If the deceased did not have a permanent residence in Goa, the succession opens where his immovable properties are situated in Goa. If his immovable properties are situated at different places in Goa, the succession opens where the major part of these properties are situated. Such major part is calculated on the basis of the value of the properties.

(iii) If the immovable properties of the deceased who was governed by this Act are situated partly in Goa and partly outside Goa, the succession opens in Goa irrespective of the value of the properties;

(iv) The succession of a person, who died outside the State of Goa, and he did not have a permanent residence in Goa, nor did he own any immovable properties in Goa but has movables in Goa, opens at the place where major part of the movable assets are located;

(v) If the deceased did not have a permanent residence nor immovable properties in Goa, the succession opens at the place where he died in the State of Goa.

(3) The rule that the Court competent to entertain the inventory proceeding is the Court where the inheritance opens is subject to the exceptions that the court in which the inventory was instituted upon the death of one of the spouses shall have jurisdiction to entertain the petition for inventory which may have to be initiated upon the death of the surviving spouse, unless the marriage is contracted under the regime of absolute separation of assets.

374. *Consolidation of inventories.*— (1) It shall be lawful to consolidate inventories in order to partition assets comprised in different inheritances:—

(a) when the persons among whom the properties are to be partitioned are the same;

(b) when the inheritances left by both the spouses are to be partitioned.

(2) Where the partition is dependent upon one or more other partitions:—

(i) If the dependence is total because in one of the partitions there are no assets other than those, which are to be allotted to the deceased in the other, the application for consolidation shall not be refused;

(ii) If the dependence is partial because there are other assets, the application for consolidation shall be decided, taking into consideration the interests of the parties and the smooth course of the proceeding.

(3) Lack of pecuniary or territorial jurisdiction to entertain one of the inventories shall not be a bar to the grant of an application for consolidation even if, in one of the inventories, there are heirs under disability.

CHAPTER XXXVI

Head of the family

375. *Petition.*— (1) Inventory proceeding shall be instituted by presenting a petition. Such petition may be presented by the interested party in person or through a duly constituted attorney. Any party or, where a party is subject to orphan's jurisdiction, the personal representative of the person under disability shall present the petition accompanied by the death certificate of the estate leaver.

(2) Where the death of the estate leaver has not been registered, other admissible evidence may be adduced.

(3) The words "interested party" mean heir, moiety holder of the deceased, the executor in a will where there are minor, interdicted or absent heirs or legatees and the persons who have the right to usufruct of a part of the inheritance without specifying its value or the thing, and also the executor.

(4) The petition shall set out the name, address, locus standi of the petitioner, the name

of the estate leaver, facts determining the jurisdiction of the court, value of the inheritance, identification of the person who will discharge the functions of the head of the family and whether there are heirs subject to orphan's jurisdiction.

376. Order of appointment of head of the family.— (1) When the petition is duly filed, the court may hold an inquiry to decide who shall hold the office of head of the family and shall upon considering the petition and documents accompanying it, appoint a person as the head of family and notify him to take oath that he shall discharge his duties diligently and faithfully and make a declaration stating:—

(i) the name and status of the estate leaver, date on which and the place where he died;

(ii) the name, status, age and capacity of the heirs, testamentary or legal, without excluding those who are known to have been conceived and the degree of kinship of the legal heirs;

(iii) whether the estate leaver has left a will or a gift and, if so, the head of the family shall produce the original or a certified copy of the will or of the gift deed;

(iv) whether the estate leaver was married and, whether there was an antenuptial agreement and if so, he shall produce a certified copy of the agreement;

(v) where a party is subject to orphan's jurisdiction, the names of persons who shall constitute the family council. The court may accept or reject the proposed names;

(vi) whether there are assets to be collated and give the names of the conferees. The head of the family shall also give the names and addresses of the legatees and of the creditors;

(vii) what are the assets of inheritance.

(2) At the time of the head of the family makes the declaration, he shall produce the certified copy of the renunciation deed if any,

and such other document as may be relevant to the case.

(3) Where the head of the family makes a reference to any document in his declaration, he shall, whenever possible, give particulars in respect of date of the original document, place where drawn or registered and the number of registration with book number and page.

(4) The declaration of the head of the family may be made by affidavit, copies of which shall be supplied to all the interested parties and may be accompanied by a list of assets and by documents.

377. Inquiry for appointment of head of the family.— Where the court is satisfied upon a perusal of the declaration the person appointed as head of the family that the office belongs to another person, the court shall, upon inquiry, if necessary, appoint such other person as the head of the family.

378. Evidentiary value of the declaration of the head of the family.— (1) The declarations of the head of the family, given both initially and subsequently, are presumed to be true until the contrary is proved, unless they are made in his own interest or they are in respect of facts which are required by the law to be proved in a particular manner or which require the agreement of all or of the majority of the parties.

(ii) The function of the head of the family shall not be performed through a constituted attorney, unless there is no other interested party available in the country for such appointment, or if all the parties or their representatives consent to such appointment.

(3) Where the functions of head of the family are performed by a constituted attorney, such functions, including statement made, shall bind the principal and he shall be held liable for all legal consequences as if such acts of commission or omission were performed by him.

379. *Rights and Duties of the Head of the family.*— (a) The head of the family, as manager of the estate, shall receive all income and profits of the assets in his possession and shall meet the normal liabilities of the inheritance and shall every year render accounts to the court, in the miscellaneous proceeding, in case the usufruct of the assets does not belong to him.

The head of the family is bound to render accounts from the date he takes charge of the assets of the inheritance and to deposit the balance amount in a Nationalized Bank, after the amount required to meet the expenses for management of the assets is deducted. Any sum handed over to the heirs under section 252 shall be included in the expenses.

(b) The head of the family shall not alienate any of the assets of the inheritance except fruits and other perishable articles. However, the head of the family may create a lease of a temporary nature which shall come to an end upon the conclusion of the inventory proceeding.

(c) The head of the family shall be bound to defend and protect the estate.

(d) The head of the family shall take such legal steps as may be necessary to recover debts payable to the inheritance when they are likely to become time barred, and in case the head of the family files a suit for recovery of a debt, any of the co-heirs may apply to the court that he be made a party to the proceeding.

(e) The creditors of the inheritance may sue the head of the family to secure a preventive relief. But, in a matter relating to title to the properties or to recovery of debts, he shall not be so sued without impleading all the co-heirs.

(f) The head of the family is entitled to be reimbursed for the expenses incurred by him on account of the estate, with interest thereon; but he shall not be liable to pay interest in respect of the amount received

by him on account of the estate, except from the time he is in default.

380. *Concealment of assets by head of the family.*— Assets are deemed to be concealed when the head of the family fraudulently does not include an asset of the inheritance in the list of assets or denies that such asset is part of the inheritance and a complaint is made to the court in this regard.

381. *Consequences of concealment.*— (a) Where the head of the family has concealed assets, he shall forfeit any right he may have to the assets concealed in favour of the other heirs.

(b) Where the head of the family has concealed the title deeds necessary to know the nature or the charges of the assets, he shall be liable for damages resulting from such concealment.

382. *Consequence of giving a list of assets based on false documents.*— Where the head of the family has included in the list of assets and liabilities, credits, rights or charges based on sham, false or forged documents, he shall be liable for the damage caused.

383. *Duration of office of head of the family.*— The head of the family shall continue to manage the estate till the order of homologation becomes final.

384. *Removal of the head of the family.*— (1) The head of family may be removed when he,—

(i) delays in filing the list of assets and liabilities,

(ii) fails to indicate to the valuers the assets which are to be evaluated,

(iii) does not appear in court, when required;

(iv) does not produce the required documents;

(v) does not give declarations or statements which are required from him; or

(vi) does not manage the assets with zeal and prudence.

(vii) in any other manner fails to discharge the duties of the office.

(2) Any party or, in case the inventory is of orphan's jurisdiction, the personal representative, may apply for the removal of the head of family. The court shall then hold a summary inquiry with a short notice to the head of the family wherein not more than 3 witnesses shall be examined by either side.

(3) When the head of family is removed, another shall be appointed in accordance with this Act and the provisions of section 376 shall be thereafter complied with.

(4) Where the cause for the removal of the head of the family is his failure to do an act for which he was duly notified, the head of the family shall be liable to be punished for disobedience of order of the court as provided in Order XXXIX Rule 2-A of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

(5) Where the removal takes place after the family auction (licitation), the successful bidders may apply that the respective assets be delivered to them. The successful bidder shall be considered to be the head of the family in respect of the assets, which are delivered to him.

(6) The above provisions shall be applicable to the person who has the duty to collate, and fails to discharge his duties of special head of the family in respect of the assets which he has to collate.

385. Discharge of the head of the family from holding office.— (1) The head of the family may apply that he may be discharged from holding the office:—

(a) when he is seventy years of age or above;

(b) when he is unable to perform his functions properly on the grounds of ill health;

(c) when he resides outside the jurisdiction of the court.

(d) when the functions as head of family are incompatible with the functions of the public post he is holding.

(2) The application for discharge shall be decided upon a summary inquiry.

CHAPTER XXXVII

Hearing

386. Hearings in the inventory proceeding.—

(1) All hearings in the inventory proceeding shall be in open court and a record (roznama) of every hearing shall be maintained. Whenever the court prepares a chart of partition, preliminary chart of partition or other document, the same shall be prepared expeditiously and a copy thereof shall be supplied to the parties or their Advocates, on the next date of hearing.

(2) Copies of the list of assets and of all applications, written replies and objections filed by a party, shall be supplied by such party to the other interested parties present for the hearing, and their acknowledgment of receipt be obtained.

387. Prosecution of inventory.— (1) Where the court is satisfied upon perusal of the declaration of the head of the family that there is no ground for the inventory to proceed, the court shall drop the proceedings after hearing the head of the family.

(2) Where the court is satisfied that the inventory is maintainable, it shall fix a date for the submission of the list of assets and for production of such documents, which the head of the family was unable to produce earlier notice of which shall be given to the head of the family.

(3) The court shall order that first summon or original process be served on the moiety holder of the estate leaver, on the heirs, on their spouses, unless they are married under the regime of absolute separation of assets, on the legatees and the creditors. Summon is not required to be served on the head of the family,

notwithstanding that he is an heir or representative of an heir.

(4) Notice shall be issued to the donee, whether he is bound to collate or not, to appear on the date fixed for taking oath that he will discharge his duties as special head of the family in respect of the assets which have been gifted to him.

(5) Failure to serve the first summon on the heirs, or on their spouses, or the moiety holder shall render all proceeding subsequent to the initial petition null and void. The application for annulling the proceeding may be filed in the inventory court at any stage of the nullity is discovered.

(6) Where a mandatory inventory has been instituted on the ground that a party is absent, if the court is satisfied, upon perusal of the declaration of the head of the family and after hearing the applicant, or on the basis of official information, that the party is at a specific place within the country, or in a foreign country, such proceeding shall be dropped.

(7) Where the head of the family declares, or record discloses, that there are unknown legatees and creditors, they shall be served by substituted service by affixing the summon in some conspicuous place in the court house.

(8) The first summon shall bring to the notice of the parties the next date of hearing, on or before which, they may file objections, if any, and such summon shall be accompanied by a copy of the declaration of head of the family of list of assets, if any, submitted by the head of the family.

(9) When any of the interested parties is under disability, the court shall appoint a personal representative for him before ordering the issuance of first summon.

388. *Proceeding in absentia*.—The inventory shall proceed in the absence of the parties who, after having received the first summon or notice of the proceeding, do not attend the Court personally or through their advocates

and said parties shall not be entitled to any further notice of any stage of the proceeding. However, such parties, who reside within the jurisdiction of the Court, shall be given notice of the licitation and homologation at the registered address. Unless after the service of summon, a party files a memo of his registered address within the jurisdiction of the court, which is different from the address given by the head of the family, the latter shall be deemed to be registered address of the party. Where a party files a registered address, he shall state the house number, street name, ward name, village or city.

389. *Parties under disability*.— (1) A party under disability shall be represented in the inventory by his natural guardian. A guardian *ad litem* shall be appointed to represent a party under disability only when his natural guardian representative has an adverse interest.

(2) A curator *ad litem* shall also be appointed to represent a party absent at an unknown place, when the said party does not put in appearance or when no curator has been earlier appointed to look after his interest.

(3) When the party under disability can be represented by his parents, no family council shall be appointed and its functions shall be performed by the parents.

(4) Where the inventory proceeding are concluded and it is necessary to make a provision for the management of the assets allotted to a person absent at unknown place, the said assets shall be entrusted to the curator *ad litem* who has been already appointed, upon his furnishing a security, when deemed necessary. Such curator shall have powers to manage the assets only and has the duty to act as a prudent man and he shall render accounts every year.

(5) Where a personal representative is already appointed by a competent court under a special law, such personal representative shall be personal representative for the inventory proceeding. Where such personal

representative has an adverse interest to such party, the court shall appoint a guardian *Ad litem*.

(6) Where the disability arises from insanity, the insanity shall be proved by a certificate issued by the Director of any Institute of Psychiatry and Human Behaviour, where the party is an internee of such an Institute. In other cases, the insanity shall be proved by certificate issued by two Psychiatrists or by referring the concerned party to the nearest Institute of Psychiatry and Human Behaviour.

390. *Discharge of guardian, etc.*— (1) When the guardian, guardian *ad litem*, curator *ad litem*, member of the family council, or the administrator wishes to be discharged as such, he shall present an application giving the grounds for seeking discharge and file a list of witnesses and documents on which he relies.

(2) The court shall, after recording evidence, if necessary, and hearing the parties, pass appropriate orders.

391. *Discharge or removal of guardian, etc.*—

(1) Any member of the family council, or relative or the guardian up to the sixth degree, may apply on grounds set out in the application that the guardian be discharged or removed from office.

(2) The respective guardian shall be given notice to give his say and upon hearing the parties the Court shall pass appropriate orders.

392. *Composition of the Family Council.*—

(1) The family council shall consist of three members, wherever possible, one from the paternal side, second from the maternal side and third one from either side.

(2) The members of the family council shall be chosen from amongst the relatives of the person under disability having regard to the proximity of relationship, friendship, qualities, age, residence and interest shown by them in the person under disability.

(3) The family council may be reconstituted when a relative with better rights applies to the court that he be included in substitution

of another member. All resolutions and actions taken earlier by the previous family council shall be saved.

(4) Where there is a conflict of interest between the person under disability and the natural guardian, spouse or ascendants or descendants, the person under disability shall be represented by a guardian *ad litem* appointed by the court.

393. *Death of moiety holder or heir during the pendency of the proceeding.*— (1) Inventory proceeding shall not abate by reason of death of the moiety holder or any heir.

(2) Where the moiety holder or any heir dies before the final disposal of the inventory, the head of the family shall make an application to bring the heirs of the deceased on record, and after a supplementary declaration of the head of the family is recorded, summon shall be served on the persons proposed to be made parties.

(3) Both the persons summoned and the parties notified may dispute the status of the persons as heirs sought to be impleaded, on or before the next date of hearing.

(4) If no such dispute is raised, the persons indicated by the head of the family shall be considered as heirs, without prejudice to the provisions of section 395.

(5) Where any creditor or legatee served with summon in the inventory proceeding dies, his heirs may make an application to get themselves impleaded by following the procedure prescribed in section 395.

394. *Challenge to the maintainability of the proceeding and other objections.*— (1) Any of the parties may on the date of hearing but within 30 days from the receipt of the summon,—

(i) challenge the maintainability of the inventory proceeding;

(ii) contend that any of the parties to the inventory is under disability;

(iii) dispute their own *locus standi* or the *locus standi* of any other party who has been served with summon, unless they have been served with the summon as creditors;

(iv) challenge the competence of the head of family to hold such office;

(v) apply that the partition should be restricted to certain assets on the ground that the remaining assets have been legally partitioned only.

(2) The application and the objections shall also state what evidence is proposed to be led. The Court shall, after such evidence is led and upon hearing the parties, decide the dispute.

(3) Where the challenge or dispute is raised before the service of summons on all the heirs, no order shall be passed thereon without completion of the said service.

(4) When the competence of the head of the family appointed during the proceeding, is challenged, the provisions of this section shall be applicable.

395. *Application to be declared interested party, legatee or creditor and to be made party to the proceeding.*— (1) Any person may, at any stage of the Inventory proceeding, apply that he may be impleaded as interested party, legatee or creditor. Such application shall be accompanied by documents and a list of witnesses relied upon.

(2) The vendee of a share in an undivided inheritance may at any stage of the inventory proceeding, before the licitation takes place, apply that he may be impleaded as interested party and such application shall be accompanied by documents and a list of witnesses relied upon.

(3) The head of the family and the parties may give their say along with documents and list of witnesses to be relied upon. After recording evidence, if any, and hearing the parties, the Court shall pass appropriate orders, including on the validity of the sale of the share.

396. *Intended sale of a share in an undivided inheritance.*— Where a co-heir or a moiety holder intends to sell his respective share or moiety in an undivided inheritance to strangers institutes inventory proceeding to enable the parties entitled to pre-empt to exercise their right and shall state in the application initiating the proceeding the price and conditions of the proposed sale. Upon such inventory proceeding being initiated, the court shall proceed to appoint the head of the family, and where necessary, appoint guardians, curators or the family council, and thereupon, convene a conference of the interested parties solely for the purpose of exercising the right of pre-emption. The procedure laid down in section 398 shall *mutatis mutandis* be followed.

397. *Sale of share in the undivided inheritance.*— Where any of the heirs has sold his undivided share in the inheritance to a stranger, or the moiety holder has sold his moiety, without notice to the co-heirs, the co-heirs may exercise the right of pre-emption in the inventory proceeding within 60 days from the date of notice of the application by the vendees to be brought on record.

398. *Order of priority and procedure.*— (1) The order of priority to exercise the right of pre-emption shall be as follows:—

- (i) all the co-heirs jointly in a conference;
- (ii) the moiety holder;
- (iii) individual heir.

(2) Where such an application is made by the vendee, the head of the family or any heir may apply to the court that a conference of all interested parties be convened to resolve whether all the co-heirs jointly wish to exercise their right of pre-emption in favour of the inheritance. Where such right is not exercised, and upon moiety holder also failing to exercise such right, the heirs may exercise their individual rights in accordance with the succeeding sub-section.

(3) (a) Where more than one heir wishes to exercise the right of pre-emption, the largest share holder shall have preference.

(b) If any interested party expressly pre-empts and, then, fails to make the payment or deposit the price within 15 days time, he shall forfeit his right. Such failure shall be brought to the notice of next largest shareholder, who has exercised the right of pre-emption, and he shall have to make the payment or deposit the price, within 15 days from the date of receipt of the notice, and so on.

(c) Where the shares are equal, all those who applied for pre-emption, shall be summoned to appear in court for licitation. Minutes of the licitation shall be drawn and the highest bid of each bidder shall be recorded. The highest bidder shall make the payment within 15 days from the date of the licitation, failing which he shall forfeit his right. Such failure shall be brought to the notice of the next highest bidder who shall have to make the payment or deposit the price within 15 days from the date of receipt of the notice and so on.

CHAPTER XXXVIII

Initial list of Assets

399. *Initial list of assets.*— (1) The assets shall be listed by the head of the family item wise starting with debts due to the estates, securities, actionable claims, money, foreign coins, objects of gold, silver and precious metals and such other objects and thereafter all the remaining movables and livestock, the immovables, including mortgages, easements, leases and other encumbrances thereon and lastly debts due by the estate.

(2) A space of about 5 cms. shall be kept between the items.

(3) Separate lists shall be prepared of the assets, which are to be valued by different persons and by different methods.

(4) Every page of the list shall be initialled and the last page shall be signed by the head of the family or when he does not know or cannot write, he shall affix his thumb impressions on all pages.

(5) The assets shall be listed by giving all the necessary particulars for their proper identification. Immovable properties shall be identified by their land registration details, description and inscription details of source of title thereto, land revenue (Matriz) number, survey number, their location and area. All the shares and securities of the same type with their respective numbers shall be clubbed together in one item except those which have been issued by different entities.

(6) Movables of the same type for which the same value ought to be given, taking into account their material utility and condition, shall also be included in one item.

(7) Improvements made by the inheritance in properties belonging to a third party shall be described in kind when they can be separated from the properties in which they were made and if they cannot be so separated, they shall be listed as debts due to the inheritance.

(8) Improvements made by third parties in the property of the inheritance shall be described as debts due by the inheritance, when they cannot be removed by the person who made such improvement.

(9) The head of the family besides listing the assets referred to in proceeding sub-sections, shall also state their estimated value.

400. *Objections to the list of assets and other objections.*— (1) Within 30 days from the date the head of the family submits the list of assets, the parties may raise the following objections:—

(a) that all assets have not been listed;

(b) that the head of the family or the donee denies the existence of the assets in his possession;

(c) that the head of the family or the donee denies his duties or obligation to collate;

(d) that the head of the family or the donee disputes that he has received assets which are attributed to have been received by him.

(2) Any party may, at any time after the expiry of 30 days, raise objection that all the assets have not been listed, provided such party satisfies the Court that he acquired knowledge of the existence of the properties only within the last 30 days before the presentation of the objection. But failure to raise such objection shall not deprive the party from seeking additional partition as provided in section 371.

(3) Where an objection has been raised that all assets and liabilities have not been listed, notice of the objection shall be given to the head of the family or the donee and they shall be called upon to list out the assets or liabilities left out or to give their say.

(4) Where the head of the family or donee who has been served with notice of the objections admits the existence of the assets or liabilities and acknowledges that they belong to the inheritance but requires time to list them, he may apply for time for the said purpose.

(5) Where the head of the family or the donee denies the existence of the assets or liabilities or declares that they do not belong to the inheritance, the court shall hold a summary inquiry as deemed necessary and decide whether the assets or liabilities should be listed.

(6) Where the dispute cannot be decided summarily and it is necessary to hold a detailed inquiry, the parties shall be directed to file a suit, if they so desire, in respect of the disputed asset or liability and the inventory shall proceed in the respect of the remaining assets and liabilities.

(7) Where the head of the family or the donee fails to give his reply on the date fixed therefor, it shall be presumed that he admits the existence of the assets or liabilities and the duty to list them.

(8) (a) Where the head of the family or the conferee denies the existence of the assets in his possession or the duty to describe them or

to collate or the dispute as to the assets which have been received by him, the disputes shall be decided summarily by the court.

(b) The provisions of sub-section (6) shall be applicable to this sub-section.

(c) Where the dispute cannot be decided in the inventory proceeding, the head of the family or the donee shall not receive the assets allotted to him without furnishing a security corresponding to the value of the disputed assets.

401. *When co-heirs are called upon to give a list of assets.*— Where the head of the family declares that he is unable to give a list of some of the assets belonging to the inheritance on the ground that the said assets are in possession of some other co-heirs, such co-heirs shall be called upon to list them within such time limit as may be fixed by the court. Thereafter, the provisions of section 399 shall be followed.

402. *Deletion of assets listed in the preliminary list.*— Where any co-heir or a third party claims ownership of any of the assets listed in the inventory and applies for their removal from the list of assets of the inheritance, the dispute shall be decided, after hearing the head of the family, or the person who has listed the assets, and after recording of evidence.

403. *Disputes relating to concealment of assets.*— (1) The person who conceals the assets is deemed to be merely in custody of those assets and the court may order such person to hand over these assets to the head of the family.

(2) The issue whether there is concealment of properties shall be decided in the inventory when the dispute can be decided on perusal of the application and replies of the parties and the documents and other material on record.

(3) Where a detail inquiry is required, the court shall direct the parties to file a Civil Suit, if they so desire.

CHAPTER XXXIX

Liabilities of the Inheritance

404. *Payment of debts of inheritance.*— The liability for the payment of debts of the estate leaver is of the inheritance. However, after the partition is effected, the co-heirs are liable to pay the debt in proportion to the share of the inheritance allotted to them.

405. *Funeral expenses.*— The funeral expenses of the estate leaver shall be paid by the inheritance, whether there are forced heirs or not.

406. *Redemption of certain encumbrances in rem.*— (1) Where immovable properties of the inheritance are mortgaged, or are charged with redeemable instalments, any of the co-heirs may, if there are funds available in the inheritance, demands that the said liabilities be satisfied before the partition.

(2) Where immovable assets are listed for partition alongwith the said encumbrances, or any other charges, the assets shall be valued as if there were no encumbrances; thereafter the amount corresponding to the encumbrances shall be deducted and the heir, to whom the immovable property is allotted, shall pay the said encumbrances exclusively.

(3) The co-heir who has paid a common mortgage debt or part thereof in excess of his share, shall by reason of the failure to deduct the encumbrance of mortgage, have only the right to recover from other co-heirs such part thereof as they are liable to pay, in proportion to their shares in the inheritance, even if the co-heir, who had paid it, gets subrogated in the rights of the creditor.

407. *Creditor's claim.*— (1) Any creditor may make an application in the inventory proceeding seeking acknowledgement and payment of the debts due to him by the inheritance which have not been listed by the head of the family.

(2) Such application may be made till the date of the order as to the manner in which

the partition is to be carried out is passed, unless the respective creditor had been summoned to take part in the inventory.

(3) Where the respective creditor was so served, he may put up his claim till the date the conference of the parties for approval of debts, is held.

(4) Failure to do so, does not debar him from claiming the payment by filing a civil suit. However, in such a case, even if the defendants do not resist the suit, the creditor shall be liable to pay costs, whatever be the outcome of the suit.

408. *Debtor's denial.*— (1) Where any debt due to the inheritance listed by the head of the family is denied by the alleged debtor, the court shall, upon hearing the head of the family and the debtor, decide if the debt shall be retained in the list or shall be removed from the list.

(2) If the debt is retained in the list of assets, the debt shall be deemed to be litigious; if the said debt is removed from the list, the right of the parties to demand its payment by filing a civil suit, is saved.

409. *Valuation.*— (1) Where no objections have been raised as regards the list of assets or the objections raised have been already decided, the court shall order that the assets be valued as on the date of the opening of the inheritance and shall, for that purpose, appoint a valuer. In the order of appointment of the valuer, the court shall fix his fees and a date for submission of the valuation report.

(2) The valuation shall be done by a valuer appointed by the court. The court may, however, appoint different valuers for the valuation of various types of assets if their special nature so demands.

(3) The valuer shall be served with the order of his appointment and be furnished with the respective list of assets.

(4) The valuer shall give the value of the each asset, as on the date of the opening of the inheritance, records such alteration or addition to the list which, in his opinion, are necessary and give the basis for the value arrived at by him as against each asset in the 5 centimeters space left for the said purpose, in the list.

410. *Valuation by officer of the court.*— Where there are assets, the value of which can be determined by a mere arithmetical operation, the file shall be referred to an officer of the court for such purpose immediately after the lists have been submitted and such officer shall determine the value within 15 days, unless the time limit is extended by the court.

CHAPTER XL

Final list, Conference of the Parties and Payment of Debts

411. *Final list.*— (1) After the valuation is finalized, the court shall fix a date for submission of final list of assets and liabilities by the officer of the court in charge of inventory proceeding, indicating their values.

(2) As regards movable of small value, notwithstanding that they are of different nature, lots shall be made so that, as far as possible, in each item, assets of the value of not less than Rs. 500/- are included.

412. *Division by metes and bounds.*— (1) Where the inheritance comprises, among other assets, of divisible immovable properties other than residential houses, any party may, after the final list of assets is made, apply that the said immovable properties be divided by metes and bounds in accordance with the shares and be allotted to the respective interested parties. Two or more interested parties may state that they agree to take a joint sub-divided plot. Where divided plots are equal in area, lots shall be drawn for the purposes of allotment.

(2) Where an application for division by metes and bounds is made, the court shall appoint a commissioner who shall submit a report stating whether the immovable

properties are divisible in accordance with the rules and regulations relating to sub-division of lands in force. Where the properties are divisible, he shall sub-divide them into plots. Where the commissioner submits a report that any immovable property is not divisible, such immovable property shall be put to licitation.

413. *Objection to overvaluation, conference, application for licitation.*— After the final list is prepared, any of the heirs or moiety holders of the deceased may within 15 days—

(a) raise the issue that assets have been overvalued;

(b) state whether they wish that all or certain assets be put to licitation;

(c) apply that conference of interested parties be convened.

Provided that where gifted and bequeathed properties are to be returned to the mass of the inheritance on the ground that they are inofficious, the party may apply for licitation till the date fixed for giving their say on how the partition should be effected.

414. *Who may decide on behalf of persons under disability.*— (1) The family council shall be convened, when it has to resolve whether the persons under disability should apply that the assets be put to licitation and whether they should participate therein.

(2) The resolution of the family council shall be included in the minutes of the conference.

415. *Conference of the interested parties.*— (1) The conference of the interested parties shall be convened by the court upon its own motion to resolve on the approval of the debts and the mode of their payment, allotment of emphyteusis as a unit to one person, overvaluation of properties, objections regarding inequalities of the lots and on any doubts or difficulties which may have a bearing on the partition.

(2) The members of the family council shall be given notice of the date of the conference,

where the inventory is subject to orphans jurisdiction, and they have to intervene to resolve on the approval of debts and mode of their payment and on the allotment of emphyteusis as a unit to one person.

(3) The resolution passed by the interested parties present at the conference is binding upon those who did not attend it, unless such parties were not given notice of the conference when such notice ought to have been given to him.

416. *Debts payable by the inheritance and mode of payment.*— (1) Debts payable by the inheritance, listed or claimed, which are approved by the interested parties who are major of age and by the family council and by the parents on behalf of the minors, are deemed to have been judicially recognized, and the court shall in the order confirming the partition, direct their payment if the amounts have not been paid before such order.

(2) When the law requires that the debt should be proved by documentary evidence of a certain probative value, the family council or the representatives of the persons under disability shall not approve the debt, unless such document or any other document of equal or of higher evidentiary value, is produced.

417. *Power of the Court to decide on debts.*— Where the parties who are of major in age and the family council or the parents of the minors, object to the approval of the debt claimed, the Court shall, notwithstanding their objection, recognize its existence, provided the creditor produces sufficient documentary evidence for the said purpose, unless the document is challenged as being forged or evidence of equal or of higher probative value is produced which disproves it or where questions, which require a detailed inquiry, have been raised.

418. *Disagreement on the approval of debts.*— (1) Where there is disagreement on the approval of debts, listed or claimed, amongst the interested parties who are of major in age or between them and the family council or parents of the minors, the debt is

deemed to have been recognized to the extent of the share of those who approve them.

(2) The creditor shall have to file a suit for the recovery of the balance amount, unless the existence of the debts can be proved as provided in the preceding section.

419. *Payment of debts fallen due.*— (1) The debts which have already fallen due and are approved by all the interested parties, shall be paid immediately in case the creditor demands their payment. Where the inheritance does not have sufficient funds, the court shall order that the assets be sold for the said purpose by public auction. The court shall determine which are the assets to be sold, when there is no agreement in that respect amongst parties who are of major in age or between them and the family council and the parents of the minors.

(2) If the creditor wishes to receive the payment in assets set apart for sale, the said assets shall be adjudicated to him for the price which has been fixed by the court.

(3) A private sale shall be held in case all the interested parties agree, or in case of a mandatory inventory, the court so decides, after hearing the family council and the personal representatives of the minors.

(4) When the assets are to be sold by private sale, the interested parties or the Court shall appoint a person and empower him to sell and shall fix the minimum price. The appointed person shall carry out the sale accordingly and submit his report to the Court.

(5) Movables shall be sold by auction at the place where they are lying or in a nearby place where they may be transferred without causing damage or heavy expenses.

(6) Where an irregularity is committed during the auction or it is discovered that assets have been fraudulently described and such fraudulent description has caused grave injury to any party, objections may be filed by such party and the court shall decide on the objections, after recording such evidence as is deemed necessary. If the court is satisfied that irregularities materially vitiating the

auction have been committed, the auction shall be set aside.

(7) The court may then hold the auction in the court premises or the assets may be sold by private sale.

(8) The preceding provisions shall apply also to debts which were approved by the court in accordance with the provisions of section 416 and 418, in case the respective order has become final and no appeal has been preferred before the chart of partition is drawn up.

420. *When debts are approved by some of the interested parties only.*— Where a debt has fallen due but it is approved by some of the interested parties only, the creditor may demand from such parties payment of their corresponding share of the liability. The payment shall be effected immediately, where there are funds, out of the shares of those parties who have approve the debts; where there are no funds, the payment shall be made out of the assets allotted to such parties after partition.

421. *Resolution on mode of payment of debts.*— (1) Notwithstanding that the creditors do not demand the payment of the debts which have fallen due and are approved, the parties may resolve on the mode of payment, either by setting apart money or properties for the said purpose entrusting the payment to one or some of them, or deciding that the debt shall be shared by them in proportion to the assets allotted to them.

(2) The parties may also resolve on the mode of payment of the debts which have been approved but have not yet fallen due.

(3) The resolution, which entrusts the payment to one or some of the parties, binds the creditors but where the creditors do not get fully paid with the properties handed over to the party or parties entrusted with the payment, the creditors may attach the properties adjudicated to the other interested parties.

(4) Where the debts have been approved by some of the parties only acting for themselves, by the family council or by the parents of the minors, only they can resolve on the mode of payment.

422. *When do legatees decide on the mode of payment of debts.*— The legatees may resolve on the liabilities and the mode of their payment, only when the entire inheritance is distributed by way of legacies or when the approval of debts will result in reducing the legacies.

423. *Insolvency.*— Where the debts approved by the parties or recognized by the Court exceed the mass of the inheritance, the procedure laid down in the law of insolvency in force shall be followed.

424. *Emphyteusis.*— Where an emphyteusis forms part of the inheritance, it shall be resolved to whom the emphyteusis shall be allotted as one unit. If none of the parties wishes to have the emphyteusis, the emphyteusis shall be sold and the proceeds shall be divided. Where the parties do not agree as to whom the emphyteusis should be allotted, the emphyteusis shall be put to licitation.

425. *Overvaluation of assets.*— (1) Where any of the parties contends that the value given to any of the assets is excessive, he shall state which according to him is its fair value and the interested parties shall in the conference resolve as whether the value shall be maintained or decreased. In the latter case, the value shall be fixed in such conference.

(2) But, where a party declares that he accepts the thing for the value given to it, the value shall not be decreased. Such a declaration shall amount to licitation. Where more than one party accepts the valuation, licitation shall be held amongst them and the thing shall be adjudicated to the highest bidder. In case the parties are unable to fix the value, the value given shall subsist.

(3) The objection regarding overvaluation may be raised orally during the conference.

CHAPTER XLI

Licitation

426. *Licitation of asset which is not susceptible to division without detriment.*—

(1) Where any party to the proceeding applies that an asset, which by its nature is not susceptible to division without detriment, be put to bid but, any co-heir having a major share in it other than by reason of marriage, succession, gift or bequest by the person who leaves the inheritance and such co-heir objects to the licitation, then the licitation shall not be held. In this eventuality, the party may apply for a second valuation.

(2) Second appraisal may also be made when the said co-heir applies for a second valuation on the ground that the thing in which he has the major share, has been overvalued.

(3) The head of family may, at the time he submits the list of assets, raise the issue of indivisibility of the properties and, if he raises such an issue, the valuer shall give his opinion on the divisibility at the time of the valuation. When such an issue is raised at a later stage and there is no agreement between the parties, the issue shall be decided after hearing the valuer.

(4) Where the thing is not subject to valuation the question of indivisibility shall, in the absence of agreement, be decided by the court after the expert appointed by the court inspects the properties and gives his report.

(5) The provisions herein contained are also applicable where there are no forced heirs and the estate leaver has gifted to one of the co-heirs, legal or testamentary, a major share in the thing which, by nature and without detriment cannot be divided and so also where in terms law or by reason of a contract, the things cannot be put to licitation or bid.

427. *Licitation of gifted assets.*— (1) When any party applies that assets gifted by the estate leaver be put to licitation, and the donee, irrespective of whether he has to collate or not, object to the gifted thing being put to bid, a

second valuation of the respective assets shall be ordered to be done. The objection of the donee, if any, may be filed within 30 days of the service of the application.

(2) After the second valuation is done and the licitation of the other properties is over, the application shall become ineffective where it is found that the donee is not bound to return any property.

(3) *Inofficious gifts:* Where the court finds that the gift is inofficious, the following provisions shall be followed:—

(a) Where the application is in respect of an asset which is susceptible to division, licitation in respect of the part which the donee has to return may be held but the donee shall not be allowed to take part in the licitation.

(b) Where the application pertains to an asset which by its nature is not susceptible to division without detriment, licitation may be held and the donee is allowed to take part in it.

(c) If none of the preceding provisions of this chapter are applicable, the donee shall be permitted to choose such of the gifted assets as are necessary to fill up his share in the inheritance and the charges or encumbrances on the gift. The donee shall return the properties in excess of his share and the assets so returned shall be put to licitation, if applied for, or has already been applied for, but, the donee shall not be allowed to take part in the licitation.

(d) The objection of the donee, should be raised within 30 days of the service of notice of the application if, at that time, licitation of the gifted assets has already been applied for or during the conference itself where licitation is applied for, and the donee is present. If none of the above conditions are satisfied, the donee shall be notified before the licitation to raise his objection within 10 days.

(4) Irrespective of any application referred to in this section, the donee may apply for a second valuation of some or all the gifted assets, within 30 days from date of notice of the first valuation, it is found that the gift is inofficious.

428. *Licitation of bequeathed assets.*— (1) Where any party applies that the bequeathed assets be put to licitation, the legatee shall be notified to give his say, if any, within three days.

(2) If the latter objects, no licitation shall be held, but it is lawful to the heirs to apply for second valuation of the assets, when the undervaluation of the assets may affect them adversely, within 30 days from the date of objection.

(3) Where the legatee does not object, the licitation shall be held and the legatee shall have a right to the respective value.

429. *When licitation is to be held.*— (1) The licitation shall be held within 30 days from the date the conference is held, if possible.

(2) Every licitation shall be conducted by an officer appointed for the purpose by the court. However, such officer shall not declare the highest bidder without the leave of the court.

(3) It is lawful to withdraw the request to have licitation till such time the respective item is put to bid; in such an event, however, any other party shall be allowed to apply for licitation on the same item.

430. *Licitation defined.*— (1) Licitation is a family auction in which only heirs and the moiety holder spouse of the estate leaver, or of the deceased heir are allowed to participate, except in cases where, in terms of the preceding section, the donee or the legatee should also be allowed to make a bid. Such of the properties of the inheritance which are not necessarily to be allotted to any particular party, only may be put to licitation.

(2) The constituted attorney of a person entitled to participate in the licitation may bid

on his behalf provided specific powers for such purpose have been conferred on him by the power of attorney. The power of attorney or a true copy thereof duly certified by a notary public shall be placed on record.

(3) Each item as described in the final list shall be put to bid individually, unless all parties agree to form lots for that purpose, or where there are some properties which cannot be separated without inconvenience. Different parties, may, by agreement, offer a bid over the same item or lot so that may be allotted to them in common. Such a bid shall be deemed to be one indivisible bid and the parties shall be jointly and severally liable to pay or deposit the entire bid amount.

(4) Once the parties have struck down an asset in the licitation, they cannot resile from it.

(5) Immediately after the licitations are over, the parties who have struck down assets are entitled to request the court to hand over the possession of the respective assets to them subject to the decision passed in appeal, if any.

(6) Licitation is not a sale in law but a mere partition of the assets of an inheritance. Each heir shall be deemed to be the sole successor of the assets allotted to him from the date of the opening of the inheritance.

431. *When licitation may be annulled.*— Where the Court is satisfied that the interest of any party under disability have not been properly taken care of by his personal representative during the licitation, the court may within 2 weeks from the date of licitation, after hearing the parties, annul the respective auction by a reasoned order.

CHAPTER XLII

Second Valuation

432. *Second valuation.*— (1) Where the first valuation discloses that the legacy is inofficious, the legatee may, within 30 days of the notice of first valuation irrespective of the application referred to in section 428, apply for second valuation either of the bequeathed

properties or of any other properties which have not been valued for the second time.

(2) The legatee may also apply for second valuation of other properties of the inheritance when it is found, on the basis of second valuation of bequeathed properties and of the licitation, that the legacy has to be reduced on the ground that it is inofficious. The assets which have been auctioned shall not be excluded from second valuation, if the value given in the second valuation is higher than the highest bid offered in licitation. The auctioned assets shall be allotted on the basis of second valuation and not on the basis of the highest bid in licitation.

433. *Inofficious legacy.*— (1) Where the legacy is inofficious, the legatee shall return the excess in specie. Such excess may be subject to licitation in which the legatee shall not be allowed to participate.

(2) Where the bequeathed thing by its nature or without detriment, cannot be divided, the following shall be observed:-

(i) The return shall be made in cash, when the inofficious part is smaller than the other part, and in such a case any party may apply for the second valuation of the bequeathed thing;

(ii) The return shall be done in specie if the inofficious part is equal or larger than the other part, and in such case the legatee may apply for the bequeathed thing be put to licitation.

The provisions of clause (c) of sub-section (3) of section 427 shall be applicable to the legatee also.

434. *Procedure for second valuation.*— (1) The second valuation shall be done by three valuers appointed by the consent of the parties. In the absence of such agreement, each side shall appoint one valuer and the Court shall appoint third valuer. The co-heir, donee, or legatee, referred to in sections 426, 427 and 428 shall form one side and the other parties, competent or under disability, shall form the other side. The minors and other

persons under disability shall be represented at the time of the valuation by their parents, or by the guardians and curators.

(2) Where there are more than one co-heir, donee or legatee in the circumstances mentioned in sections 426 to 428, all of them who have common interest shall constitute one block against the other parties.

435. *Scheme of partition.*— (1) Upon completion of valuation of assets and licitation, if any, the heirs, head of the family, and the moiety holders shall submit to the court a scheme of partition within 30 days and the court shall thereafter make an order thereon showing the mode of partition. In the said order, the court shall decide all questions including questions which have not been decided till then and which have to be necessarily decided for drawing the chart of partition.

(2) The court may, in exceptional cases, direct the parties to lead such evidence as may be necessary to effect the partition but, if there are questions which require a detailed inquiry, the court shall direct the parties to file a Civil Suit, if they so desire. Questions which are required to be decided in the normal course of the inventory proceeding shall not be left to be decided at the time of passing the order on how the partition should be effected.

(3) No appeal shall lie from the order deciding on the mode of partition. However, such order may be challenged in the appeal, if any, preferred against the final order confirming the partition.

436. *Procedure for filling up the shares of the parties.*— The procedure hereunder shall be followed for the purpose of filling up of the shares of the parties in the inheritance:—

(a) Gifted assets or assets struck down in the licitation shall be allotted to the respective donee or bidder.

(b) Assets of the same kind and nature as the properties gifted or struck down in the licitation shall be allotted to the parties who

do not collate or to the parties who are not the highest bidders.

(c) When it is not possible to satisfy the co-heirs with assets of the same kind and nature, where the gifted assets are immovable, the said co-heirs shall be entitled to be identified in money and, if there are no funds in the inheritance, as many assets as may be necessary to secure the sum due, shall be sold in public auction.

(d) However, if the gifted assets are movables, the co-heirs shall be entitled to be satisfied with other movables of the inheritance according to their value.

(e) The same principle shall be followed if some heirs have received legacies, to compensate the co-heirs who have not received legacies.

(f) The remaining assets shall be distributed by drawing lots amongst the parties, after forming equal lots.

(g) Debts due to the inheritance which are disputed, debts which are not sufficiently proved, and assets which have no value shall be distributed proportionately amongst the parties. Debts due by the inheritance which have been approved by all the parties, shall be allotted proportionately, unless a different mode of payment is agreed upon.

CHAPTER XLIII

Chart of Partition

437. *Chart of Partition.*— (1) After the court passes the order on the scheme of the partition, the clerk of the court shall draw a chart of partition within 10 days, complying with the order and the provisions of the preceding sections, subject to the provisions of section 436.

(2) The chart shall be drawn in the following manner:—

(i) The total amount of assets shall be determined by adding the values of each kind of assets as attributed to them in the valuation and in the licitation and by deducting debts which have to be paid by inheritance, legacies and encumbrances which ought to be reduced;

(ii) The amount of the share of each party shall be worked out and also the part which is allotted to the party in each type of asset, shall be shown lastly;

(iii) The allotment of each share will be done by referring to the number of the item in the final list of assets and liabilities.

(3) The lots which have to be drawn by sortition shall be designated by alphabetical letters.

(4) The values shall be indicated by figures only. The numbers of the items of the final list of the assets and liabilities shall be shown in figures and in words and when they are continuous, only the terminal numbers within which the numbers are comprised shall be recorded.

(5) Where a fraction of the items has been allotted to the co-heirs, such fraction shall be mentioned.

(6) In each lot, the nature of the assets of which it is comprised, shall be shown.

(7) The court shall initial every page of the chart of partition and confirm by a note, the corrections, erasures or interlineations.

438. *Preliminary chart.*— (1) Where, at the time of drawing the chart, the clerk of the court finds that the properties gifted, bequeathed or struck down in the licitation exceed the share of the respective party or the disposable portion of the estate leaver, he shall prepare a preliminary chart indicating exactly what is the amount in excess.

(2) Upon perusal of the preliminary chart submitted by the clerk of the court, the court shall issue the following directions:—

(a) Where amidst the properties gifted to a co-heir, there is an indivisible property which does not fit as a whole in the share of the donee, the court shall direct that such property shall form part of the mass of the partible properties as any other property of the inheritance;

(b) In other cases, the court shall issue notice to the donee to exercise within 10 days his right to choose from amongst the gifted properties those necessary to make up his share in the inheritance and, if he fails to exercise such choice, his share shall be filled with such properties as the court deems fit;

(c) Where the gift made to a stranger is inofficious it shall be reduced in accordance with sections 111 to 121 of this Act;

(d) The court shall notify the unsuccessful bidders, and those who did not take part in the licitation, who are to be paid owelty monies by the successful bidders, to demand within 10 days the payment of the owelty money, if they so desire, unless such amount has already been deposited; Where the payment is not demanded, owelty money shall carry an interest @ 5% p.a. from the date of the final order confirming the partition and the creditors shall have a lien on the properties allotted to the debtor. If the demand is made, the successful bidder shall be notified to deposit within 15 days the amount due and, if he fails to pay, the licitation shall stand cancelled and the court shall fix a fresh date for licitation. The party who has defaulted in paying owelty money shall not be allowed to participate in the new licitation.

(3) When two or more parties have made a joint bid for a property, they shall be jointly and severally liable for the entire owelty amount and in the event the entire owelty amount is not paid or deposited within time, the licitation shall stand cancelled in respect of the entire property and none of the defaulting parties shall be allowed to take part in the new licitation.

439. *Rectification.*— (1) The parties may, if necessary, within 10 days after the preliminary chart is drawn, apply for rectification of the partition or may object that the lots are not equal or that the order directing the partition has not been complied with. Such objection shall be decided within the next 10 days. The conference of the parties may be convened if the objection is as regards the inequalities of the lots.

(2) The order upholding the objection shall direct that the necessary modification be made to the chart. If necessary, a new chart of partition shall be drawn up.

440. *Sortition.*— Upon disposal of objections to the preliminary chart, lots shall be drawn, if required. Each lot shall be identified by an alphabetical letter, which shall be written on pieces of papers and placed in a box. At the time of drawing of the lots, first preference shall be given to the moiety holder of the estate leaver. So far as the co-heirs are concerned, the order of priority shall be alphabetical order of their names, starting with first name. The Judge shall draw lots on behalf of the parties who fail to remain present for the sortition. The name of the party to whom the lot falls shall be recorded in the file. After the draw of lots is over, the parties are free to exchange between themselves the lots, which have fallen to them. However, to exchange the lots fallen to the persons under disability, the court's permission has to be obtained. In the case of a prodigal, so declared by the court, the exchange shall not be permitted, unless the prodigal consents thereto.

441. *Second and third chart of partition.*—

Second chart:

(1) When the moiety holder of the estate leaver, is a party, the chart shall consist of two portions and after the portion of the estate leaver is ascertained, a second chart shall be drawn for partitioning the said portion amongst the heirs.

Third chart:

(2) Where, by reason of the right of representation, the shares are unequal, after the determining the share of the person who is represented, a third chart shall be drawn to partition the shares amongst the representatives.

(3) When any heir is benefited with a major part of properties, the lots shall be formed, if possible, in such a way that the draw of lots amongst the other co-heirs be done out of equal portions.

(4) Where it is not possible to draw the second chart and have a sortition in respect of the second chart at the time sortition of lots of the first chart is made and so also when it is not possible to have a sortition of the lots of the third chart at the time the sortition of the lots of the second chart is made, the provision applicable in relation to the first chart shall be followed, both as regards the drawing of the charts as well as regards drawing of lots of the second and the third chart.

CHAPTER XLIV

Confirmation of Partition

442. *Confirmation of the partition.*— (1) The court shall make a final order declaring who are the successors or heirs of the estate leaver, and confirming the partition in accordance with the chart of partition and the draw of lots within 10 days, after evidence of payment of duty is produced. The order confirming the partition shall have the force of the decree and accordingly a decree shall be drawn.

(2) The decree shall contain—

- (a) the name of the original applicant and of the estate leaver;
- (b) names of the heirs or legatees and creditors;
- (c) description of the assets;
- (d) chart of Partitions;
- (e) outstanding debts due by the inheritance or heirs including their approval and mode of payment;
- (f) order confirming the partitions.

(3) A party to an inventory proceeding may file a certified copy of the partition decree with the Registering Officer under the Registration Act, 1908 (16 of 1908), within the local limits of whose jurisdiction the whole or any part of the assets is situated and such officer shall file such decree in Book No. 1 maintained under section 51 of the Registration Act, 1908 (16 of 1908).

443. *Costs.*— The costs of the inventory shall be paid by the heirs and the moiety holder, in proportion to what they have received and, where the inheritance is distributed by way of legacies only, the legatees shall be liable for the payment of costs in the same proportion.

444. *Safeguards to be observed when the assets are delivered before the order of homologation becomes final.*— An interested party may receive the assets which have been allotted to him in the partition before the order of homologation becomes final; however, the assets shall be handed over only upon such party furnishing security, in case of negotiable instruments, shares and securities an endorsement shall be made that the holder shall not transfer or assign such assets, without the order of the Court. Security shall also be obtained in cases where a paternity suit, suit for annulment of a will, or any other suit the decision of which is likely to affect the partition is pending.

445. *Fresh partition.*— When, as a result of a decision in a appeal or a suit, it is necessary to make a fresh partition, the head of the family shall immediately be put in possession of the properties which no longer belong to the party who has received it. The inventory shall be corrected only to the extent it is strictly necessary to implement the decision and the valuation and description of the assets shall be maintained, notwithstanding that there is a complete substitution of the heirs.

CHAPTER XLV

Amendment and Rescission of Partition

446. *Amendment of Partition.*— The partition may be amended, even after it has become final and no appeal has been

preferred, in the very same inventory proceeding by agreement of the parties or their representatives, where there is a mistake of facts in the list of assets or in the classification of the assets or any other error, which vitiates the will of the parties:

Provided that where in the order there are clerical or arithmetical mistakes or any material errors arising from accidental slip or omission, they may be corrected at any time by the court, either of its own motion or on application of any of the parties.

447. *Suit for amendment of partition.*— A party may file a suit for amendment of the partition, when subsequent to the final order the party acquires knowledge of a mistake of fact or classification or other error which vitiates the will of the party, and the other parties are not in agreement to have the partition amended, amicable.

448. *Rescission of partition.*—

(A) *Suit for rescission:*

(1) A suit for rescission of the judicial partition which has become final, may be filed where there is preterition or non joinder of any of the co-heirs and if it is found that the other parties acted fraudulently or malafide, whether the malicious conduct relates to the preterition or to the partition.

(B) *Application for review:*

(2) Rescission of a judicial partition may be obtained by filing a review application in the same court in the following circumstances:—

(a) When it is proved in criminal proceeding, resulting in a conviction which has become final, that the order which is sought to be reviewed was passed by giving of bribe, corruption or influence;

(b) When a judgement and order of conviction which has become final is produced wherein it was held that the depositions or declarations of the experts, which might have affected the order that is sought to be reviewed, are false.

The period of limitation to file a review on both the above grounds is 30 days reckoned from the date on which the order on the basis of which the review is filed had become final.

(3) The review application may be filed in the very same court which passed the order, within 30 days from the date on which the party has secured the document, or acquired knowledge of the fact which is the basis for the review, on the following grounds:—

(a) When a decision is based on a false document or judicial act and this issue was not considered in the proceeding when the decision was given;

(b) When a new document is produced, which was not in the possession or power of the party or the party did not know about the existence and such document is itself sufficient to cancel the evidence on which the decision is based;

(c) When the admission, withdrawal or compromise on which the judgement is based, is revoked or there is a valid ground for revoking the same;

(d) When the admission, withdrawal or compromise is null, due to lack of mandate or insufficiency of powers of the attorney, unless the order homologating or ratifying the partition has already been personally served on the principal;

(e) When the inventory proceeded by default and the party was not served with summon or the summon is null;

(f) When the judgement is contrary to another judgement which constitutes res-judicata and the party proves that he had no knowledge of the judgement during the pendency of the proceeding.

(4) Where the rescission is sought on the basis of a document, the plaint or the review petition, as the case may be, shall be accompanied by the respective certified copy.

449. *Settlement of share of the heir left out in the inventory.*— (1) Where the heir left out

wishes to have his share paid in cash, he may apply in the inventory that a conference of the parties be convened to work out the value of his share.

(2) Where the parties do not reach an agreement, the assets in respect of which there is a difference in value shall be valued again and the parties may apply for a second valuation and, thereafter, the amount to which such heir is entitled, shall be fixed by the court.

(3) A fresh chart of partition shall be made so that the changes resulting from the payments necessary to make up the share of the heir who was left out, are known. No sooner the share is settled, such heir may apply that the debtors be notified to effect the payment, failing which they will be bound to make good his share by way of the assets, without prejudice, however, to the alienations already made. If the demand is not made, and the amount due is not deposited by the respective parties, the money due shall earn interest @ 6% p.a. from the date of the order.

450. *Finality of the decision.*— (1) Questions decided in the inventory proceeding, other than the questions decided by order made under section 435, shall be considered as having attained finality, as against the head of the family and the persons summoned as heirs, and so also as against the parties who were given an opportunity to be heard before the decision, unless the right to file a suit is expressly reserved by the court.

(2) Where the questions involved are questions of law, or questions of fact which can be decided on the basis of documents produced or ordered to be produced, the court shall not reserve the right to file a suit.

(3) As regards questions of fact which have to be proved by adducing other evidence, the court may decide the question provisionally reserving the right to file a suit when a finding on merits can be given without holding a detailed inquiry.

CHAPTER XLVI

Appeals

451. *Appeals.*— (1) An appeal from the final order made in the inventory proceeding shall lie to the competent Court depending upon the value of the assets and such appeal shall be deemed to be an appeal under section 96 of the Code of Civil Procedure, 1908 (5 of 1908).

(2) An appeal from order shall lie from every order, other than a merely administrative order, made in inventory proceeding to the competent court depending upon the value given to the assets at the time the order is made and appeal shall be deemed to be an appeal under section 104 of the Code of Civil Procedure, 1908 (5 of 1908).

CHAPTER XLVII

Preventive Measures

452. *Appointment of Receiver.*— (1) After the filing of the inventory proceeding, pending appointment of the head of the family, where there is a just apprehension that the assets of the estate are in danger of being wasted, damaged or dissipated or alienated, the court may, upon an application of any party interested in the preservation of the assets, and, or of its own motion, order that a list of the assets with their description and estimated value, be prepared. The court shall place the assets in the custody of a Receiver who may be either the applicants the person in possession or any other interested party. The Receiver shall manage the assets and render accounts. The list of assets prepared under this clause shall form part of the list of assets in the inventory proceeding.

(2) When the court is satisfied that the delay will defeat the very object of the relief sought, it may pass such order, ex parte.

(3) Upon hearing the person dispossessed by the ex parte order, the court may either confirm or vacate the ex parte order passed. In case it is confirmed, such assets shall be handed over to the head of the family appointed in the inventory proceeding.

453. *Temporary Injunction.*— When an interested party has reasonable apprehension that another interested party may cause damage to the assets of the inheritance, or commit acts which may cause grave and irreparable injury to his right, he may apply for a temporary injunction or such other order as may be just and proper to avoid such injury or damage. The court may pass an interim ex parte order, when it is satisfied that the delay will defeat the very object of the relief sought.

CHAPTER XLVIII

Miscellaneous

454. *Cause Title.*— (1) The cause title in the initial petition instituting inventory proceeding shall set out the name and full address of the petitioner and the name and the permanent residence of the estate leaver.

(2) It shall be the duty of the head of the family to submit a fresh cause title in inventory proceeding setting out the names of the estate leaver, the petitioner, head of the family, and also the names of all the impleaded interested parties.

(3) It shall be the duty of the head of the family to submit to the court an amended cause title whenever a party is added or deleted.

(4) The causes title in the inventory proceeding shall be in the form as specified below subject to such modifications as may be require.

In the Court of

Inventory Proceeding No..... of

IN THE MATTER OF

INHERITANCE OF THE LATE XYZ

1. ABC..... Petitioner

2. LMN..... Head of the family

And

3. PQN

4. RST

etc. Interested Parties

455. *Stamp duty payable.*— (1) The inheritance shall be liable to pay stamp duty of one percent of the net value of the assets as shown in the chart of partition.

(2) The interested parties shall be liable to share the duty payable in proportion to their share in the inheritance.

(3) Where any of the interested parties does not pay his share of the duty payable, any other interested party may pay such share of duty and recover the amount in the same proceedings with interest at the rate of 10% per annum where the defaulting party is entitled to owelty, such amount shall be adjusted against the owelty, and for the balance, there shall be a charge on the assets allotted to him and he shall not be entitled to the possession of those assets.

456. *Fixation of the amount of costs.*— (1) The costs of inventory proceeding shall be at the discretion of the court.

(2) Where a party is guilty of causing unjustified delay, the court may, for reasons to be recorded, make an order requiring such party to pay to the other party or parties such costs as it deems fit.

457. *Enforcement of Order.*— (1) After the final order of partition is made, any party to whom assets have been allotted, may apply in the inventory proceeding that such assets be handed over to him.

(2) If the party in possession fails to hand over immovable assets the delivery of possession shall be made by the court by removing such party from possession of the assets. With regard to movables, the delivery of possession shall be made by the court by handing over such assets to such party.

(3) Where monies are payable, the court shall order the party to liable to pay, to deposit the amount due in the court within a reasonable period failing which the court shall proceed to attach the assets of the defaulting party and sell them in the public auction. The

amount realized by such auction shall be paid to the party entitled to it. The balance, if any, shall be refunded to the defaulter.

(4) Any order, other than the final order, which is enforceable, shall be enforced in the manner set out in this section.

(5) The defaulting party shall bear the cost of the attachment and sale.

458. *Summary Proceeding.*— Inventory proceeding shall be summary proceeding and shall not be governed by the Code of Civil Procedure, 1908 (5 of 1908), unless specifically provided for.

459. *Power to make rules.*— The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

460. *Repeal and Savings.*— (1) On and from the date of coming into force of this Act, all provisions of the laws in force at present corresponding to any of the provisions of this Act shall stand repealed.

(2) Notwithstanding such repeal,—

(a) anything duly done or suffered or any right, privilege, obligation or liability acquired, accrued or incurred or any penalty, forfeiture or punishment incurred under any law so repealed shall be deemed to have been done, suffered, acquired, accrued or incurred, as the case may be, under the corresponding provisions of this Act;

(b) any fee, duty, charges, fine, etc. payable under any law so repealed or any books, forms, etc. in use of under any law so repealed shall, to the extent permissible and expedient, continue to be payable or used, as the case may be, till new fees, duties, charges, fines, books, forms, etc. are prescribed or fixed, as the case may be, under the provisions of this Act.

(3) All proceedings pending under the repealed laws before any court in the State of Goa, as on the date of the coming into force of

this Act, shall be continued in terms of the procedure provided in this Act.

Statement of Objects and Reasons

The provisions of the law relating to succession, notaries and inventory proceeding were dispersed in the Civil Code, 1867, in force with effect from 01-07-1870, as amended from time to time; the Civil Procedure Code of 1939 in force from 01-01-1941; Notarial law contained in articles 1, 4, 6, 25 to 29, 34, 35, 36, 38 to 49, 63 to 108 of Decree No. 8373, Government Order No. 14157 dated 14-11-1952, Article 1 of Decree Law No. 32033 and Article 179 of Law No. 2049 articles 192, 193, 194 and 195 of Decree No. 26118 dated 24-11-1935.

All this became laws of the land by virtue of section 5 of the Goa, Daman and Diu (Administration) Act, 1962 (1 of 1962) until amended by competent Legislature.

Further, the original text of these provisions, scattered at times in several enactments, are in Portuguese language and hence the Courts, the Members of the Bar and the Litigants faced practical difficulties in their application. This caused delays in disposing of cases.

A pressing need was felt to consolidate the various provisions of Law into one comprehensive, rational and integrated legislation, to facilitate their application and implementation by the Bench, the Bar and the litigants.

Considering the need to take into account the social changes and the new situations arising from the fact that Goa is now a State of the Union of India and Goans are citizens of India and considering also that the Laws which in force were applicable to an altogether different set of political circumstances, it has become necessary to amend the Law to meet the present day requirements and to make it workable.

Further, in view of noteworthy new principles that have evolved, a more humane

and fair outlook is now taken on illegitimacy, on mentally challenged persons and on such other persons upon whom a stigma was cast in the past for no fault of theirs. These principles and outlook have been adopted in framing the present law.

That object is sought to be achieved by this Bill which deals with the Law of Succession, Special Notaries and the Inventory proceedings.

While drafting the Bill, the following Legislations have been kept in view:

(a) The provisions of the Portuguese Civil Code enacted in Portugal in 1966, replacing the Civil Code of 1867 and the Code of Civil Procedure of 28-12-1961, replacing the Code of Civil Procedure of 1939, as well as Decrees amending from time to time many provisions of the aforesaid Code on the subject of succession and inventory and Notarial Law, and the Law approved by Decree Law No. 207 dated 14-08-1995 and amendments thereto.

(b) The Provisions of Louisianan Civil Code, 1870 (based on Napoleon Code), in force in the State of Louisiana of the United States of America as originally enacted, and the subsequent amendment included by Act of 1981 No. 919 effective after 31-12-1981 and Act of 1990 No. 147 with effect from 1-7-1990.

(c) Legislation in force in the rest of India.

(d) There are some original provisions which have been incorporated bearing in mind the present circumstances.

The subject of succession, partition, execution of wills with corresponding notarial acts and inventory proceeding meant for partition of the estate through the Court fall within the purview of entry 5 of List III-Concurrent List of the seventh schedule to the Constitution of India and in view of section 5 of the aforesaid Goa, Daman and Diu (Administration) Act, 1962 (1 of 1962), the Legislature of the State of Goa is competent to enact Law on the subject.

This Bill seeks to achieve the above objects.

Financial Memorandum

No financial implications are involved in this Bill.

Memorandum Regarding Delegated Legislation

The Bill empowers the Government to make the rules to carrying out the purposes of the Act.

This delegation is of normal character.

Assembly Hall, (MANOHAR PARRIKAR)
Porvorim, Goa. Minister for Law
27th July, 2012.

Assembly Hall, (N. B. SUBHEDAR)
Porvorim, Goa. Secretary (Legislature)
27th July, 2012.

LA/LEGN/2012/1274

The following bill which was introduced in the Legislative Assembly of the State of Goa on 1st August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Administrative Tribunal (Amendment) Bill, 2012

(Bill No. 17 of 2012)

A

BILL

further to amend the Goa Administrative Tribunal Act, 1965 (Act No. 6 of 1965).

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa Administrative Tribunal (Amendment) Act, 2012.

(2) It shall come into force at once.

2. *Amendment of section 3.*— In section 3 of the Goa Administrative Tribunal Act, 1965 (Act No. 6 of 1965), for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The President and the Additional President shall hold office until they attain the age of sixty years:

Provided that the President or the Additional President who has already attained the age of sixty years on the date of commencement of the Goa Administrative Tribunal (Amendment) Act, 2012, shall cease to hold office with effect from the 1st day of October, 2012.”.

Statement of Objects and Reasons

The post of the President and the Additional President of the Administrative Tribunal is equivalent to the post of a District Judge within the meaning of Article 236 of the Constitution of India. In terms of rule 21 of the Goa Judicial Service Rules, 2005, every member of the Goa Judicial Service including the District Judges and Additional District Judges shall retire by superannuation on attaining the age of sixty years subject to clearance by Special Review Committee as specified in the said rule. Therefore, the Bill seeks to substitute sub-section (4) of section 3 of the Goa Administrative Tribunal Act, 1965 (Act 6 of 1965), so as to provide that the President and the Additional President of the Administrative Tribunal shall hold office until they attain the age of sixty years.

The Bill also seeks to make provision, in respect of the persons who have attained the age of sixty years and holding the office of the President or the Additional President of the Administrative Tribunal on the date of commencement of the Goa Administrative Tribunal (Amendment) Act, 2012, to the effect that such persons shall cease to hold their respective office with effect from the 1st day of October, 2012.

Financial Memorandum

No financial implications are involved in this Bill.

Memorandum Regarding Delegated Legislation

No delegated legislation is involved in this Bill.

Porvorim-Goa.
Dated: 27-07-2012.

MANOHAR PARRIKAR
Chief Minister

Assembly Hall,
Porvorim-Goa.
Dated: 27-07-2012.

NILKHANT SUBHEDAR
Secretary to the
Legislative Assembly of Goa.

ANNEXURE

Section 3. Constitution of Tribunal.— (1) The State Government shall, by Notification in the Official Gazette, constitute for each district of the State, a Tribunal to exercise the jurisdiction, perform the functions and discharge the duties entrusted to it by or under this Act or any other law for the time being in force.

(2) Each Tribunal shall consist of a President and an Additional President, as the State Government may deem fit. Both, the President as well as the Additional President, shall have co-extensive powers and concurrent jurisdiction to deal with cases filed in the Tribunals. The Additional President shall decide such cases as are made over to him by the President.

(3) The qualifications for a person to be appointed as President or Additional President shall be such as may be prescribed:

Provided that the President and the Additional President shall be persons who have such legal qualification or experience as may be prescribed.

(4) The President and the Additional President shall hold office until they attain the age of sixty five years.

Assembly Hall,
Porvorim-Goa.
Dated: 27-07-2012.

NILKHANT SUBHEDAR
Secretary to the
Legislative Assembly of Goa.

LA/LEGN/2012/1275

The following bill which was introduced in the Legislative Assembly of the State of Goa on 1st August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

**The City of Panaji Corporation
(Amendment) Bill, 2012**

(Bill No. 16 of 2012)

A

BILL

further to amend the City of Panaji Corporation Act, 2002 (Goa Act 1 of 2003).

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:

1. *Short title and commencement.*— (1) This Act may be called the City of Panaji Corporation (Amendment) Act, 2012.

(2) It shall come into force at once.

2. *Insertion of new section 22A.*— After section 22 of the City of Panaji Corporation Act, 2002 (Goa Act 1 of 2003), the following section shall be inserted, namely:—

“22A. *Honoraria or allowances to Mayor, Dy. Mayor and Councillors of the Corporation.*— The Mayor, Dy. Mayor and Councillors of the Corporation may be paid such honoraria or other allowances by the Corporation, as may be prescribed by rules made by the Government.”

Statement of Objects and Reasons

The Bill seeks to insert a new section 22A in the City of Panaji Corporation Act, 2002 (Goa Act 1 of 2003) so as to provide for payment of such amount of honoraria or other allowances to the Mayor, Dy. Mayor and Councillors of the Corporation as may be prescribed by the Government.

This Bill seeks to achieve the above object.

Financial Memorandum

There is no financial burden on the Government as the expenditure on account of honoraria or other allowances to the Mayor, Dy. Mayor and Councillors will be met by Municipal Corporation of the City of Panaji from their own fund.

Memorandum Regarding Delegated Legislation

Clause 2 of the Bill empowers the Government to frame rules prescribing the honoraria or other allowances payable to the Mayor, Dy. Mayor and Councillors of the Corporation.

Porvorim-Goa, FRANCIS D'SOUZA
26th July, 2012. Minister for Urban Development

Assembly Hall, NILKHANT SUBHEDAR
Porvorim-Goa, Secretary to the
26th July, 2012. Legislative Assembly of Goa.

LA/LEGN/2012/1284

The following bill which was introduced in the Legislative Assembly of the State of Goa on 2nd August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

**The Goa Tax on Luxuries
(Twelfth Amendment) Bill, 2012**

(Bill No. 20 of 2012)

A

BILL

further to amend the Goa Tax on Luxuries Act, 1988 (Act No. 17 of 1988).

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa Tax on Luxuries (Twelfth Amendment) Act, 2012.

(2) It shall be deemed to have come into force on the 25th day of May, 2012.

2. *Amendment of section 2.*— In section 2 of the Goa Tax on Luxuries Act, 1988 (Act No. 17 of 1988) (hereinafter referred to as the “principal Act”),—

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) ‘accommodation provided for commercial purpose’ means a building or part of a building including open space with or without tents or any enclosure erected for giving on hire, or space where accommodation is provided for trade fair, exhibitions, demonstrations, promotions, conferences, sales, services, etc.;

Explanation.— An accommodation provided for regular sales or any other activities mentioned hereinbefore in a mall, a bazaar or any such arrangements including accommodation on ‘leave and licence’ basis shall be deemed to be ‘accommodation provided for commercial purpose’;”;

(ii) for clause (aa), the following clause shall be substituted, namely:—

“(aa) ‘accommodation with luxuries provided for other purposes’ means a building or part of a building or a part of any hotel, community hall, marriage and cultural halls, lawns and open spaces, or any such enclosures or mandap, but excluding Agarshala and halls attached to religious institutions, let on hire by proprietor, for holding social or cultural functions like, marriages, get togethers, parties, receptions, cultural programmes, etc., with services, including like providing furniture, entertainment, sound system, decorations, illumination, pandal, etc., but excluding services like supplying

food and beverages, for monetary consideration;”;

(iii) in clause (b), after sub-clause (iii), the following sub-clause shall be inserted, namely:—

“(iv) the activity of providing services in relation to health fitness and other related services and includes services provided in beauty parlours, spa or health spa, health club, etc.”;

(iv) for clause (ee), the following clause shall be substituted, namely:—

“(ee) ‘luxuries’ means services specified in the Schedules, ministering the enjoyment, comfort or pleasure to its users and includes the services provided in beauty parlours, spa or health spa, health club, etc.”;

(v) for clause (ii), the following clause shall be substituted, namely:—

“(ii) ‘proprietor’ in relation to accommodation provided for commercial purposes or accommodation with luxuries provided for other purposes or in relation to services provided in beauty parlours, spa or health spa, health club, etc., includes person who for the time being is in-charge of the management of building or part of building or tent or enclosure or of a beauty parlour, spa or health spa, health club, etc., or of an open space provided to conduct the business, as the case may be;”;

(vi) in clause (j), after the words “accommodation with luxuries provided for other purposes”, the expression “or for services provided in beauty parlours, spa or health spa, health club, etc.” shall be inserted;

(vii) in clause (p), before the words “during a year”, the expression “or for services provided in beauty parlours, spa or health spa, health club, etc.” shall be inserted.

3. *Amendment of section 5.*— In section 5 of the principal Act,—

(i) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) There shall be levied a tax on the turnover of receipts of a proprietor of a beauty parlour, spa or health spa, health club, etc., at the rates provided in Schedule IV hereto.”;

(ii) in sub-section (7), in clause (i), in sub-clause (b), for the word “Schedule”, wherever it occurs, the expression “Schedule I or Schedule IV” shall be substituted.

4. *Amendment of Schedule II.*— In Schedule II to the principal Act, under the word “Proprietor”, after entry at serial number (2), the following entry shall be inserted, namely:—

“(3) Services provided in beauty parlours, spa or health spa, health club, etc. Rs. 2000/-.”

5. *Insertion of new Schedule IV.*— After Schedule III to the principal Act, the following Schedule shall be inserted, namely:—

“SCHEDULE IV

[See sub-section (2A) of section 5]

Sr. No.	Turnover of Receipts	Rate of Tax
(i)	For providing services in beauty parlours, spa or health spa, health club, etc. having air-conditioning facility, whose turnover is above Rs. 5.00 lakhs per annum	10%

6. *Repeal and Saving.*— (1) The Goa Tax on Luxuries (Amendment) Ordinance, 2012 (Ordinance No. 3 of 2012) is hereby repealed.

(2) Notwithstanding the repeal of the Goa Tax on Luxuries (Amendment) Ordinance, 2012 (Ordinance No. 3 of 2012), anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Statement of Objects and Reasons

In the Budget presented in March, 2012 it was proposed to bring the space or premises being rented for being used for commercial activities like sale, fairs, bazaars, etc., under the ambit of luxury tax as provided under the Goa Tax on Luxuries Act, 1988 (Goa Act 17 of 1988) (hereinafter referred to as the “said Act”). The Bill, therefore, seeks to amend clause (a) of section 2 of the said Act to provide the same.

It was further proposed in the Budget to remove Agarshala and hall attached to religious institutions from the ambit of Luxury tax net. Hence, the Bill seeks to amend clause (aa) of section 2 of the said Act to provide for the same.

It was also proposed in the Budget to levy luxury tax at the rate of 10% of the receipts on services provided in beauty parlour and spa. The Bill seeks to amend the said Act suitably for the purpose.

The Bill also seeks to repeal the Goa Tax on Luxuries (Amendment) Ordinance, 2012 (Ordinance No. 3 of 2012) promulgated by the Governor of Goa on 25-05-2012.

The Bill seeks to achieve the above objects.

Financial Memorandum

No financial implications are involved in this Bill.

Memorandum Regarding Delegated Legislation

No delegated legislation is involved in this Bill.

Assembly Hall, Porvorim-Goa. 30-7-2012. SHRI MANOHAR PARRIKAR
Chief Minister/Finance Minister

Assembly Hall, Porvorim-Goa. 30-7-2012. N. B. SUBHEDAR
Secretary to the
Legislative Assembly of Goa

Governor's Recommendation under Article 207 of the
Constitution of India

In pursuance of Article 207 of the Constitution of India, I, Bharat Vir Wanchoo, the Governor of Goa hereby recommend the introduction and consideration of the Goa Tax on Luxuries (Twelfth Amendment) Bill, 2012, by the Legislative Assembly of Goa.

ANNEXURE

Bill No 20 of 2012

**Extract of the Goa Tax on Luxuries Act,
1988 (Act 17 of 1988)**

2. *Definitions.*— In this Act, unless the context otherwise requires,—

(a) 'accommodation provided for commercial purpose' means a building or part of a building where accommodation is provided for holding trade fairs, exhibitions, demonstrations, sales promotions, conferences, etc., and includes open space with or without tents or any enclosure erected for giving on hire space for holding the activities herebefore mentioned.

(aa) 'accommodation with luxuries provided for other purposes' means a building or part of a building or a part of any hotel, community hall, agrashala, marriage & cultural halls, lawns and open spaces, or any such enclosures or mandap let on hire by proprietor, for holding social or cultural functions like, marriages, get togethers, parties, receptions, cultural programmes, etc. with services including like providing furniture, entertainment, sound system, decorations, illumination, pandal, etc., but excluding services like supplying food and beverages, for monetary consideration;

(ab) 'Additional Commissioner' means a person appointed as Additional Commissioner of Luxury Tax under sub-section (2) of section 3 of this Act.

(ac) 'appointed day' means the day on which this Act comes into force;

(b) 'business' includes.—

(i) the activity of providing residential accommodation and any other services in

connection with, or incidental to or ancillary to such activity of providing residential accommodation, by a hotelier for monetary consideration;

(ii) The activity of providing accommodation for commercial purpose, such as, for holding trade fairs, exhibitions, demonstrations, sales promotions, conferences, etc., for monetary consideration.

(iii) The activity of providing accommodation with luxuries for other purposes, such as, for holding marriage ceremonies, wedding receptions, get togethers, parties, cultural or social functions, etc., for monetary consideration;

(c) 'club' includes both, an incorporated as well as unincorporated association of persons, by whatever name called;

(cc) 'Commissioner' means a person appointed as Commissioner of Luxury Tax under sub-section (1) of section 3 of this Act

(d) 'hotel' includes a residential accommodation, a lodging house, an inn, a public house or a building or part of a building, a club, a boat, vessel or any place where a residential accommodation is provided by way of business;

Explanation.— A residential accommodation provided under Timeshare Agreement or under Package Deal Agreement or under any such system wherein the facility of availing residential accommodation during a given period in a year is allowed upon a lumpsum payment, shall be deemed to be a "hotel" for the purposes of this Act.

(e) 'hotelier' means the owner of the hotel and includes the person who for the time being is in charge of the management of the hotel;

(ee) 'luxuries' means services specified in the Schedule, ministering the enjoyment, comfort or pleasure extraordinary to necessities of life;

(f) 'luxury provided in a hotel' means accommodation and other services provided in a hotel, including air conditioning, telephone, television, radio, music entertainment, extra beds and the like, and all services other than casinos, water sports, boat/river cruises and supply of food and drinks;

Explanation.— Wherever accommodation provided is under Timeshare Agreement or a Package Deal Agreement or any such system wherein only maintenance charges, by whatever name called, are collected periodically, over and above lumpsum payment made, the charges for luxuries provided shall be determined as under:-

(i) Where a hotel is having any of the following facilities, Rs. 500/- per day for the accommodation facility actually availed.

Facilities

- (i) Swimming Pool.
- (ii) Health Club.
- (iii) Tennis Courts.
- (iv) Golf Courses.
- (v) Shopping Arcade.

(ii) In all other cases, the charges for luxuries shall be worked out at Rs. 300/- per day for the accommodation facility actually availed.

(g) 'person' includes any company or association or body of individuals whether incorporated or not, and also a Hindu undivided family, a firm, a local authority, a club, a corporation, any social or religious institution, a trust, or society, a State Government or the Central Government or artificial juridical person not falling within any of the preceding descriptions.;

(h) 'Place of business' includes an office, or any other place which a hotelier or a proprietor uses for the purpose of business or where he keeps his books of accounts in any media;

(i) 'prescribed' means prescribed by rules made under this Act;

(ii) 'proprietor' in relation to accommodation provided for commercial purposes or accommodation with luxuries provided for other purposes, includes person who for the time being is in-charge of the management of building or part of building or tent or enclosure or an open space provided to conduct the business, as the case may be;

(j) 'receipt' means the amount of monetary consideration received or receivable by a hotelier or a proprietor or by his agent for the luxury provided in a hotel or for the accommodation provided for commercial purposes or for accommodation with luxuries provided for other purposes;

(k) 'registered' means registered under section 9 of this Act;

(l) 'rules' means rules made under this Act;

(ll) 'Schedule' means the Schedule appended to this Act;

(m) 'State' means the State of Goa;

(n) 'tax' means the tax levied on luxuries provided in a hotel or for accommodation provided for commercial purpose/and on other luxuries provided under this Act;

(o) 'Tribunal' means a Tribunal constituted under section 4;

(p) 'turnover of receipts' means the aggregate of the amount of monetary consideration received or receivable by a hotelier or by a proprietor or by his agent in respect of luxuries provided in a hotel or for accommodation provided for commercial purpose or for accommodation with luxuries provided for other purposes, during a year;

(q) 'year' means a financial year;

5. *Incidence and levy of tax.*— (1) Subject to the provisions of this Act and the rules made thereunder, there shall be levied a tax on the turnover of receipts of a hotelier.

(2) There shall be levied a tax on the turnover of receipts at the rates provided in Schedule I hereto.

(3) Where in addition to the charges for luxury provided in a hotel, service charges are levied and appropriated by the hotelier and not paid to the staff, then such charges shall be deemed to be part of the charges for luxury provided in the hotel.

(4) Where luxury provided in a hotel to any person (not being an employee of the hotel) is not charged at all, nevertheless there shall be levied and collected a tax on such luxury at one fourth of the rates specified in sub-section (2), as if full charges for such luxuries were paid to the hotelier.

(5) The tax shall not be levied and payable in respect of the turnover of receipts for supply of food and drinks, on the sale of which the hotelier is liable to pay tax under the Goa Value Added Tax Act, 2005 (Act 9 of 2005).

(6) For the purposes of this Act, tax collected separately by the hotelier shall not be considered to be part of the receipt of the turnover of receipts of the hotelier.

(7) (i) The Government may, by notification in the Official Gazette,—

(a) reduce any rate of tax;

(b) enhance any rate of tax; and may by like notification, add to, or omit from, or otherwise amend any entry, of the Schedule and thereupon the Schedule shall be deemed to have been amended accordingly.

(ii) Any notification issued under clause (i) shall take effect prospectively, either from the date of publication thereof in the Official Gazette or from such later date as may be mentioned therein.

(iii) Every notification made under clause (i) shall be laid as soon as may be after it is made on the table of Legislative Assembly while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the notification or the Legislative Assembly agrees that the notification should not be made and notify such decision in the Official Gazette, the notification shall from the date of publication of such decision have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that notification.

SCHEDULE II

[See sections 9(2) and 9A]

Serial No.	Category of business	Amount of registration charges/renewal charges
1	2	3

Hotelier

- | | | |
|-----|---|-------------|
| (1) | For hotels having upto 25 rooms including rent back accommodation, tourist home and any | Rs. 1,000/- |
|-----|---|-------------|

1	2	3
	other accommodation required to be covered under the Goa Registration of Tourist Trade Act, 1982 (Act 10 of 1982).	
(2)	For hotels having rooms in excess of 25 but upto 50 including rent back accommodation, tourist home and any other accommodation required to be covered under the Goa Registration of Tourist Trade Act, 1982 (Act 10 of 1982).	Rs. 2,500/-
(3)	For hotels having rooms in excess of 50 but upto 100 including rent back accommodation, tourist home and any other accommodation required to be covered under the Goa Registration of Tourist Trade Act, 1982 (Act 10 of 1982).	Rs. 5,000/-
(4)	For hotels having rooms in excess of 100 but upto 200 including rent back accommodation, tourist home and any other accommodation required to be covered under the Goa Registration of Tourist Trade Act, 1982 (Act 10 of 1982).	Rs. 10,000/-
(5)	For hotels having rooms in excess of 200 including rent back accommodation, tourist home and any other accommodation required to be covered under the Goa Registration of Tourist Trade Act, 1982 (Act 10 of 1982).	Rs. 15,000/-

Proprietor

- | | | |
|-----|--|-------------|
| (1) | Accommodation provided for commercial purposes. | Rs. 2,000/- |
| (2) | Accommodation with luxuries provided for other purposes. | Rs. 2,000/- |

LA/LEGN/2012/1285

The following bill which was introduced in the Legislative Assembly of the State of Goa on 2nd August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Commission for Minorities Bill, 2012

(Bill No. 19 of 2012)

A
BILL

to provide for the establishment of the Goa Commission for Minorities to safeguard the interests of the minorities in the State of Goa and to provide for matters connected therewith or incidental thereto.

Be it enacted by the Legislative Assembly of Goa in the Sixty third year of the Republic of India, as follows:—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—

(1) This Act may be called the Goa Commission for Minorities Act, 2012.

(2) It shall extend to the whole of the State of Goa.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. *Definitions.*— (1) In this Act, unless the context otherwise requires,—

(a) “Commission” means the Goa Commission for Minorities constituted under section 3.

(b) “Government” means the Government of Goa;

(c) “member” means a member of the Commission and includes its Chairperson and Vice-Chairperson;

(d) “minorities”, for the purposes of this Act, means minority communities notified by the Central Government under section 2 (c) of the National Commission for Minorities Act, 1992 (Central Act No. 19 of 1992), and who are domiciled in the State of Goa;

(e) “notification” means a notification published in the Official Gazette of the Government of Goa;

(f) “prescribed” means prescribed by the rules made by the Government under this Act.

CHAPTER II

The Goa Commission for Minorities

3. *Constitution of the Goa Commission for Minorities.*— (1) The Government may, by notification, constitute a body to be known as the Goa Commission for minorities to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of a Chairperson, a Vice-Chairperson and five members to be nominated by the Government from amongst persons of eminence, ability and integrity:

Provided that five members including the Chairperson shall be from amongst the minority communities.

4. *Term of office and conditions of service of Chairperson, Vice-Chairperson and members of the Commission.*— (1) The Chairperson, Vice-Chairperson and every member shall hold office for a term of three years from the date he assumes office or until he attains the age of sixty-five years, whichever is earlier.

(2) The Chairperson, Vice-Chairperson or a Member may, by writing under his hand addressed to the Government, resign from the office of Chairperson, Vice-Chairperson or member, as the case may be, at any time.

(3) A person shall be disqualified for being appointed as and for being continued as a Chairperson or Vice-Chairperson or a member, as the case may be, if he,—

(a) is an undischarged insolvent; or

(b) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Government involves moral turpitude; or

(c) is of unsound mind and stands so declared by a competent Court; or

(d) has been removed or dismissed from service of the Central Government or any State Government or a body or Corporation owned or controlled by the Central Government or a State Government; or

(e) refuses to act or becomes incapable of acting; or

(f) without obtaining leave of absence from the Commission, absents himself from three consecutive meetings of the Commission; or

(g) has, in the opinion of the Government, so abused the position of Chairperson, Vice-Chairperson or member, as to render that person's continuance in office detrimental to the interests of minorities or the public interest:

Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.

(4) Any person who is disqualified under sub-section (3) shall be removed by the Government

(5) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination.

(6) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson, Vice-Chairperson and Members shall be such as may be prescribed.

5. *Officers and other employees of the Commission.*— (1) The Government shall provide the Commission with a Secretary and such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

6. *Salaries and allowances to be paid out of grants.*— (1) The salaries and allowances payable to the Chairperson, Vice-Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the officers and other employees referred to in section 5, shall be paid out of the grants referred to in sub-section (1) of section 10.

7. *Vacancies, etc., not to invalidate proceedings of the Commission.*— No act or proceeding of the Commission shall be questioned or shall become invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

8. *Procedure to be regulated by the Commission.*— (1) The Commission shall meet as and when necessary and at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the signature of the Secretary or any other officer of the Commission duly authorized by the Secretary on his behalf.

CHAPTER III

Functions of the Commission

9. *Functions of the Commission.*— (1) The Commission shall perform all or any of the following functions, namely:—

(a) evaluate the progress of the development of minorities in the State;

(b) monitor the working of the safeguards provided in the Constitution of India and in

laws enacted by Parliament and the State Legislative Assembly of Goa;

(c) make recommendations for the effective implementation of safeguards for the protection of the interest of minorities by the Government;

(d) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;

(e) cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;

(f) conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;

(g) suggest appropriate measures in respect of any minority to be undertaken by the Government;

(h) make periodical or special reports to the Government on any matter pertaining to minorities and in particular the difficulties confronted by them; and

(i) consider the grievances of the minorities and to suggest appropriate solution from time to time;

(j) any other matter which may be referred to it by the Government:

Provided that if any matter specified in sub-section (1) is undertaken by the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992 (Central Act 19 of 1992), the Goa Commission for Minorities shall cease to have jurisdiction in such matters.

(2) The Government shall cause the recommendations referred to in clause (c) of sub-section (1) to be laid before Legislative Assembly of Goa along with a memorandum explaining the action taken or proposed to be taken on the recommendations and the

reasons for the non-acceptance, if any, of any of such recommendations or part thereof.

(3) The Commission shall, while performing any of the functions mentioned in sub-clauses (a), (b) and (d) of sub-section (1), have all the powers of a civil court trying a suit and, in particular, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of the State and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and/or documents; and

(f) any other matter which may be prescribed.

CHAPTER IV

Finance, Accounts and Audit

10. *Grants by the Government.*— (1) The Government shall, after due appropriation made by Legislative Assembly of Goa by law in this behalf, pay to the Commission by way of grants such sums of money as the Government may think fit for being utilized for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

11. *Accounts and Audit.*— (1) The Commission shall maintain proper accounts of income and expenditure of the Commission and other relevant records and prepare an annual statement of accounts in such form as may be prescribed.

(2) The accounts of the Commission shall be audited by such authority and at such intervals as may be prescribed and any expenditure incurred in connection with such audit shall be payable by the Commission.

(3) As soon as may be after the receipt of the report of the auditor, the Commission shall send a copy of the annual statement of accounts, together with a copy of the report of the auditor to the Government.

(4) The Government may, after perusal of the report of the auditor give such directions, as it thinks fit, to the Commission and the Commission shall comply with such directions.

12. *Annual Report.*— The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Government.

13. *Annual Report and Audit Report to be laid before Legislative Assembly.*— The Government shall cause the Annual Report together with a memorandum of action taken on the recommendations contained therein, and the reasons for the non-acceptance, if any, of any of such recommendations and the Audit Report to be laid, as soon as may be after the reports are received, before the Legislative Assembly of Goa.

CHAPTER V

Miscellaneous

14. *Chairperson, Vice-Chairperson, Members and staff of Commission to be public servants.*— The Chairperson, Vice-Chairperson, Members and employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

15. *Power to make rules.*— (1) The Government may, by notification make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such

rules may provide for all or any of the following matters, namely:—

(a) Salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson, Vice-Chairperson and members under sub-section (6) of section 4 and of officers and other employees under sub-section (2) of section 5;

(b) any other matter under clause (f) of sub-section (3) of section 9;

(c) the form in which the annual statement of accounts shall be maintained under sub-section (1) of section 11;

(d) the authority, and the intervals at, which the accounts of the Commission shall be audited;

(e) the form in, and the time at, which the Annual Report shall be prepared under section 12;

(f) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly of Goa, while it is in session for a total period of fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rules or decides that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that such modification or annulment shall be without prejudice to the validity of anything previously done under those rules.

16. *Power to remove difficulties.*— (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Official Gazette, make

such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the Legislative Assembly of Goa.

Statement of Objects and Reasons

The Bill seeks to provide for the establishment of the "Goa Commission for Minorities" to safeguard the interests of the minorities in the State of Goa and for the matters connected therewith.

This Bill seeks to achieve the above objects.

Financial Memorandum

The creation of new establishment called "Goa Commission for Minorities" is proposed to be implemented by the Home Department. In terms of clause 6 and 10(2) of the Bill, financial implications are involved towards payment of salaries and allowances of the staff and other administrative expenses of the Commission. Besides, depending upon schemes to be formulated from time to time, financial implication will be involved for the release of grants/loans/subsidies etc. However, presently it may not be possible to exactly quantify the financial implications in this regard.

Memorandum Regarding Delegated Legislation

Clause I(3) of the Bill empowers the Government to appoint a date, by notification in the Official Gazette, for bringing the Act into force.

Clause 3(I) of the Bill empowers the Government to constitute, by notification in the Official Gazette, the Goa Commission for Minorities.

Clause 4(6) of the Bill empowers the Government to frame rules for providing salaries and allowances payable to, and other terms and conditions of service of the Chairperson, Vice-Chairperson and Members of the Commission.

Clause 5(2) of the Bill empowers the Government to frame rules for providing salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees appointed for the purpose of Commission.

Clause 9(3) (f) of the Bill empowers the Government to frame rules for providing other matters where under the Commission shall have powers for the purposes of sub-clause (3) of Clause 9.

Clause 11(1) of the Bill empowers the Government to frame rules for providing the form in which the annual statement of accounts shall be prepared.

Clause 11(2) of the Bill empowers the Government to frame rules for providing an authority by whom, and the intervals at which, the accounts of the Commission shall be audited.

Clause 12 of the Bill empowers the Government to frame rules for providing the form in which, and the time at which, the annual report shall be prepared for each financial year.

Clause 15 of the Bill empowers the Government to frame rules for carrying out the purposes of the Act.

Clause 16 of the Bill empowers the Government to make order for removing any doubt or difficulty, which arise while giving effect to the provisions of the Act.

These delegations are of normal character.

Porvorim-Goa,
30th July, 2012.

MANOHAR PARRIKAR
Minister for Home

Assembly Hall,
Porvorim-Goa.
30th July, 2012.

N. B. SUBHEDAR
Secretary to the Legislative
Assembly of Goa.

Governor's Recommendation under Article 207 of the Constitution of India

In pursuance of the Article 207 of the Constitution of India, I, Bharat Vir Wanchoo, the Governor of Goa hereby recommend the introduction and consideration of the Goa Commission for Minorities Bill, 2012 by the Legislative Assembly of Goa.

LA/LEGN/2012/1286

The following bill which was introduced in the Legislative Assembly of the State of Goa on 2nd August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Electricity Duty (Amendment) Bill, 2012

(Bill No. 18 of 2012)

A

BILL

further to amend the Goa, Daman and Diu Electricity Duty Act, 1986 (Act 7 of 1986).

Be it enacted by the Legislative Assembly of Goa in the Sixty third Year of the Republic of India, as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa Electricity Duty (Amendment) Act, 2012.

(2) It shall be deemed to have come into force on the 9th day of May, 2012.

2. *Amendment of Schedule.*— In the Schedule appended to the Goa, Daman and Diu Electricity Duty Act, 1986 (Act 7 of 1986) (hereinafter referred to as the “principal Act”),—

(I) in PART – A, for the figures “18”, wherever they occur, the figures “20” shall be substituted;

(II) in PART – B, for the figures “58”, wherever they occur, the figures “70” shall be substituted;

(III) in PART – C, for the figures “58”, wherever they occur, the figures “70” shall be substituted;

(IV) in PART-D, for the figures “18”, the figures “20” shall be substituted; and

(V) in PART-E, for the figures “18”, the figures “20” shall be substituted.

3. *Repeal and saving.*— (1) The Goa Electricity Duty (Amendment) Ordinance, 2012 (Ordinance No. 1 of 2012) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Statement of Objects and Reasons

The Union Ministry of Power is mandating that all States should strengthen the transmission, sub-transmission and distribution network within the States, so as to meet the Government of India's plan for 'Capacity Addition' and also to make it possible to provide "Open Access" as per the provisions of the Electricity Act, 2003 (Central Act 36 of 2003). The power demand of the State of Goa is also growing at a fast pace. In order to cater to the anticipated demand, as well as to provide quality and reliable power supply to the consumers, it is necessary to strengthen both the transmission and sub-transmission network in the State of Goa. This would also help to meet the stringent regulations relating to 'Standards of Performance' and 'Supply Code'.

Building up of the transmission and distribution network in the State of Goa involves huge investment which cannot be met from the normal revenue requirement. In order to mobilize additional revenue for the aforesaid, it is proposed to amend the Schedule appended to the Goa, Daman and Diu Electricity Duty Act, 1986 (Act 7 of 1986) so as to increase the rates of duty leviable on the units of energy consumed.

The Bill also seeks to repeal the Goa Electricity Duty (Amendment) Ordinance, 2012 (Ordinance No. 1 of 2012) promulgated by the Governor of Goa on 09-05-2012.

This Bill seeks to achieve the above objects.

Financial Memorandum

By increasing rates of duty leviable on the units of energy consumed, as envisaged in the Bill, the Government is likely to earn an average additional annual revenue of rupees 28 Crores.

Memorandum Regarding Delegated Legislation

No delegated legislation is involved in this Bill.

Porvorim-Goa,
27th July, 2012.

MILIND NAIK
Minister for Power

Assembly Hall,
Porvorim –Goa.
27th July, 2012.

N. B. SUBHEDAR
Secretary to the
Legislative Assembly of Goa.

Governor's Recommendation under Article 207 of the Constitution of India

In pursuance of Article 207 of the Constitution of India, I, Bharat Vir Wanchoo, Governor of Goa, hereby recommend the introduction and consideration of the Goa Electricity Duty (Amendment) Bill, 2012, by the Legislative Assembly of Goa.

ANNEXURE

Extract of Part A, Part B, Part C, Part D and Part E of the schedule appended to The Goa, Daman and Diu Electricity Duty Act, 1986 (Act No. 7 of 1986).

PART – A

In respect of –

Private houses, bungalows, clubs, hostels and hospitals run on non-commercial lines; charitable, education and religious institutions, etc. for lights, fans, radios, domestic heatings and other household appliances –

Units consumed per month	Paise/unit.
(a) for first 30 units	18
(b) for next 120 units	18
(c) for balance above 150 units	18

PART – B

In respect of—

Shops, offices, railways-stations, hotels, restaurants, photographic studios, X-Ray installations, laundries, drycleaners, cinemas, theatres, A.I.R. Stations and other commercial installations for lights, fans, radios, heating and other appliances –

Units consumed per month	Paise unit.
(a) for first 30 units	58
(b) for next 120 units	58
(c) for balance above 150 units	58

PART – C

In respect of –

General motive power service

Units consumed per month	Paise/unit.
All units (for L.T. consumers)	58
All units (for H.T. consumers)	58

PART – D

In respect of—

Poultry, dairy, piggery, pisciculture, etc. for lights, fans, heating and other appliances—

Units consumed per month	Paise/unit.
All units	18

PART – E

In respect of –

Irrigation pumping and agricultural purposes –

Units consumed per month	Paise/unit.
All units	18

LA/LEGN/2012/1301

The following bill which was introduced in the Legislative Assembly of the State of Goa on 3rd August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Human Resource Development
Bill, 2012

(Bill No. 22 of 2012)

A

BILL

to make special provision for developing human resources in the State of Goa by imparting required training to the unemployed persons and to the work force in the State of Goa, so as to make available the trained and skilled personnel to the Government Departments, Institutions, Government Undertakings, autonomous bodies, social institutions, Business establishments, individuals, etc., and also with a view to assist the unemployed youth, to get gainful employment and for that purpose to establish a Human Resource Development Corporation, and to provide for matters connected therewith or incidental thereto.

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—

(1) This Act may be called the Goa Human Resource Development Act, 2012.

(2) It shall extend to the whole of the State of Goa.

(3) It shall come into force on such date, as the Government may, by Notification, in the Official Gazette, appoint.

2. *Definitions.* — In this Act, unless the context otherwise requires,—

(a) “Corporation” means the Goa Human Resource Development Corporation established under section 3;

(b) “Government Bodies” includes,—

(i) all Government Departments;

(ii) all autonomous bodies and institutions which are established or under control of the Government; and

(iii) all corporations which are either wholly owned by the Government or partly in which not less than fifty-one percent of the paid up share capital is held by the Government;

(c) “Government” means the Government of Goa.

(d) “Official Gazette” means the Official Gazette of the Government;

(e) “premises” means any land or building or part of a building and includes,—

(i) the garden, grounds and out-houses, if any, appertaining to such building or part of a building; and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

(f) “prescribed” means prescribed by rules made under this Act;

(g) “private firms” includes business houses, establishments, companies, partnership firms, etc., which are run by private individuals or groups;

(h) “services” means any services, such as housekeeping, security, maintenance and operation, gardening, etc.;

CHAPTER II

Establishment and Constitution of the Corporation

3. *Establishment and incorporation.*— (1) For the purpose of providing trained personnel for all types of services like housekeeping, security, maintenance and operations, gardening, etc. to various Government bodies, private firms, individuals, etc., in the State of Goa, there shall be established by the Government, by notification in the Official Gazette, a Corporation by the name the Goa Human Resource Development Corporation.

(2) The said Corporation shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name, and shall be competent to acquire, hold and dispose of property, both movable and immovable, and to contract, and do all things necessary for the purposes of this Act.

4. *Constitution.* — (1) The Corporation shall consist of the following ten directors, that is to say:—

(a) Secretary/Special Secretary to the Government of Goa, Department of Personnel;

(b) Additional Secretary/Joint Secretary to the Government of Goa, Department of Personnel;

(c) Additional Secretary/Joint Secretary to the Government of Goa, Department of Finance;

(d) Commissioner, Labour and Employment or Deputy Labour Commissioner, as may be decided by the Government;

(e) Director of Health Services;

(f) four persons having shown capacity in human resource development to be nominated by the Government;

(g) The Managing Director of the Corporation, shall be the Chief Executive Officer of the Corporation and shall also be the Ex-Officio Secretary to the Corporation.

(2) The Government shall appoint one of the directors of the Corporation to be the Chairman of the Corporation and another to be the Vice-Chairman.

5. *Disqualification for being director.*— A person shall be disqualified for being nominated as a director of the Corporation, if he,—

(a) is an employee of the Corporation, not being the Managing Director; or

(b) is of unsound mind, and stands so declared, by a competent court; or

(c) is an undischarged insolvent; or

(d) is convicted of an offence involving moral turpitude within a period of five years immediately before his being nominated as a director.

6. *Term of office and conditions of service of directors.*— (1) The Chairman, Vice-Chairman and directors of the Corporation nominated under clause (f) of sub-section (1) of section 4, shall hold office for a period of three years from the date of their nomination unless their term of office is terminated earlier by the Government.

(2) The directors of the Corporation nominated under clause (f) of sub-section (1) of section 4 shall be entitled to draw such honorarium or compensatory allowance for the purpose of meeting the personal expenditure for attending the meeting of the Corporation or of any Committee thereof or when appointed in connection with the work undertaken by or for the Corporation, as may be prescribed.

(3) It is hereby declared that the office of director or Chairman or Vice-Chairman of the Corporation, in so far as it is an office of profit under the Government of India, or the Government of any State, or the Government of any Union territory, shall not disqualify the holder for being chosen as, and for being, a member of the Legislative Assembly of Goa.

7. *Meetings of Corporation.*— (1) The Corporation shall meet at such times and places, and shall, subject to the provisions of sub-section (2), observe such rules of procedure in regard to the transaction of its business as may be provided by regulations made under this Act.

(2) A director who is directly or indirectly concerned or interested in any contract, loan, arrangement or proposal entered into or proposed to be entered into by or on behalf of the Corporation, shall at the earliest, possible opportunity, disclose the nature of his interest to the Corporation, and shall not be present for any meeting of the Corporation when any such contract, loan, arrangement or proposal is discussed.

8. *Cessation of being Director.*— (1) If a director,—

(a) becomes, subject to any of the disqualifications mentioned in section 5; or

(b) tenders his resignation in writing to, and such resignation is accepted by, the Government; or

(c) is absent without the Corporation's permission from three consecutive meetings of the Corporation, or from all meetings of the Corporation for three consecutive months; or

(d) is convicted of an offence involving moral turpitude, he shall cease to be a director of the Corporation.

(2) The Government may, by order, suspend from office for such period as it thinks fit, or remove from office any director of the Corporation, who in its opinion,—

(a) has refused to act; or

(b) has become incapable of acting; or

(c) has so abused his position as director as to render his continuance on the Corporation detrimental to the interest thereof or of the general public; or

(d) is otherwise unfit to continue as director:

Provided that, a director shall not be suspended or removed from office unless he has been given a reasonable opportunity to show cause against the order.

9. *Vacancies how to be filled.*— Any vacancy of a director of the Corporation shall be filled as early as practicable, in like manner as if the appointment was being made originally:

Provided that, during any such vacancy the continuing directors may act as if no vacancy had occurred.

10. *Temporary absence of directors.*— (1) If the Chairman or Vice-Chairman or any other director of the Corporation is by reason of illness or otherwise rendered temporarily incapable of carrying out his duties or is granted leave of absence by the Government, or is otherwise unable to attend to his duties in circumstances not involving the cessation of his directorship, the State Government may appoint another person to act for him and carry out his duties and functions by or under this Act. Such person shall vacate office on the date when the director for whom he is acting resumes his duties.

(2) In the absence of the Chairman, the Vice-Chairman shall preside over the meetings of the Corporation and in the absence of both Chairman and Vice-Chairman, the directors present shall choose amongst them the Presiding Officer to preside over the meetings of the corporation.

11. *Proceeding presumed to be good and valid.*— No disqualification of, or defect in the appointment of any person acting as the Chairman, Vice-Chairman or a director of the Corporation, shall vitiate any act or proceeding of the Corporation, if such act or proceeding is otherwise in accordance with the provisions of this Act.

12. *Officers and servants of the Corporation.*— (1) The Government shall appoint a Managing

Director of the Corporation and a Chief Accounts Officer of the Corporation.

(2) The Corporation may appoint such other officers and servants, subordinate to the officers mentioned in sub-section (1), as it considers necessary for the efficient performance of its duties and functions.

(3) The conditions of appointment and service of the officers and servants of the Corporation and their scales of pay shall,—

(a) as regards the Managing Director and Chief Accounts Officer, be such as may be prescribed; and

(b) as regards the other officers and servants, be such as may be determined by regulations made under this Act.

CHAPTER III

Functions and Powers of the Corporation

13. *Functions.*— The functions of the Corporation shall be—

(i) generally to provide trained and skilled personnel for all types of services like housekeeping, security, maintenance and operations, gardening, etc., to various Government bodies, private firms, Individuals, etc. in the State of Goa, with the aim to generate employment among the unemployed youth, work for their welfare and upliftment.

(ii) in particular, and without prejudice to the generality of clause (i), to—

(a) provide personnel to render adequate and proper service to the Government departments, and other agencies and individuals as mentioned in sub-clause (i);

(b) provide employment opportunities to the unemployed persons and persons belonging to the weaker section of society who are efficient to work so that they are not exploited by the middle man or contractors;

(c) impart training to, and develop skills in, the personnel in order to equip them for disposal of their duties efficiently and effectively;

(d) provide regular training to, and conduct refresher courses for, the existing employees of the Government bodies at various levels, to upgrade their knowledge and skill;

(e) design training modules keeping in view the requirement of personnel in various Government Departments or as per clients requirements, from time to time;

(f) undertake the work of house-keeping, security service, maintenance and operation, gardening, etc., and for that purpose get registration/licences under the relevant law in force;

(g) hold conferences, workshops, panel discussions, etc., in the field of Human Resource Development;

(h) to tie up with educational institutions/university for getting knowhow about development of Human Resources;

(i) develop and implement schemes for the benefit of unemployed youth, with an aim to provide them employment and necessary skill that may be required, for the purpose;

(j) undertake schemes or works either jointly or on agency basis, with other corporate bodies or institutions, or with the Government, in furtherance of the purposes for which the Corporation is established and all matters connected therewith;

(k) undertake and carry out all such related activities as the Government may, from time to time, decide to be undertaken or carried out by the Corporation;

(l) receive grants from the State and Central Government for the maintenance

of administrative setup of the Corporation. Further, grants could be received from the Corporates for purpose of training and skill development of their manpower for which purpose the Corporation may tie up with the existing training institutes, set up in the State of Goa or outside the State of Goa;

(m) survey and identify training gaps/ /training needs in Government bodies, private firms, etc., whenever required, and provide solutions to meet the requirement and bridge the gaps.

14. *General powers of the Corporation.*— Subject to the provisions of this Act, the Corporation shall have power—

(a) to acquire and hold such property, both movable and immovable, as the Corporation may deem necessary for the performance of any of its activities and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Corporation;

(b) to constitute advisory committee to advise the Corporation;

(c) to engage suitable consultants or persons having special knowledge or skills to assist the Corporation in the performance of its functions;

(d) subject to the previous permission of the Government, to delegate any of its powers generally or specially to any of its committees or Officers, and to permit them to re-delegate specific powers to their subordinates;

(e) to enter into and perform all such contracts as it may consider necessary or expedient for carrying out any of its functions;

(f) to enter into any trade and business and invest the surplus money with the aim of earning profit for strengthening the

financial position of the Corporation and spend it for achieving the aims and objects of the Corporation; and

(g) to do such other things and perform such acts as it may think necessary or expedient for the proper conduct of its functions and carrying into effects the purposes of this Act.

15. *Authentication of orders and documents of Corporation.*— All permissions, orders, decisions, notices and other documents of the Corporation shall be authenticated by the signature of officer authorised by the Corporation in this behalf.

16. *Directions by the Government.*— The Government may issue to the Corporation such general or special directions as to policy as it may think necessary or expedient for the purpose of carrying out the purposes of this Act, and the Corporation shall be bound to follow and act upon such directions.

CHAPTER IV

Finance, Accounts and Audit

17. *Application of Corporation's assets.*— All property, funds and other assets vesting in the Corporation shall be held and applied by it, subject to the provisions and for the purposes of this Act.

18. *Corporation's fund.*— (1) The Corporation shall have and maintain its own fund, to which shall be credited—

(a) all monies received by the Corporation by way of grants, subventions, loans, advances or otherwise;

(b) all fees, costs and charges received by the Corporation under this Act;

(c) all monies received by the Corporation from the disposal of lands, buildings and other properties, movable and immovable, and other transactions;

(d) all monies received by the Corporation by way of rents and profits, or in any other

manner or from any other source including the proceeds of any loan authorized by section 20.

(2) The Corporation may keep in current or deposit account with the State Bank of India or any other Bank approved by the Government in this behalf such sum of money out of its fund as may be prescribed and any money in excess of the said sum shall be invested in such manner as may be approved by the Government.

(3) Such accounts shall be operated upon by such officers of the Corporation as may be authorized by it by regulations made in this behalf.

19. *Grants, subventions, loans and advances and capital contribution to the Corporation.*—The Government may, after due appropriation made by the State Legislature by law in this behalf, make such grants, subventions, loans and advances and capital contribution to the Corporation as it may deem necessary for the performance of the functions of the Corporation under this Act; and all grants, subventions, loans and advances and capital contribution made shall be on such terms and conditions as the Government may, after consulting the Corporation, determine.

20. *Power of the Corporation to borrow.*—The Corporation may, subject to such conditions as may be prescribed in this behalf, borrow money in the open market or otherwise, with a view to providing itself with adequate resources.

21. *Reserve and other funds.*— (1) The Corporation shall make provision for such reserve and other specially denominated funds as the Government may, from time to time, direct.

(2) The management of the funds referred to in sub-section (1), the sums to be transferred from time to time to the credit thereof and the application of money comprised therein, shall be determined by the Corporation.

(3) None of the funds referred to in sub-section (1) shall be utilized for any purpose other than that for which it was constituted, without the previous approval of the Government.

22. *Expenditure from funds.*— (1) The Corporation shall have the authority to spend such sums as it thinks fit for the purposes authorized under this Act from out of the general fund of the Corporation referred to in section 18 or from the reserve and other funds referred to in section 21, as the case may be.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the Corporation may contribute such sums as it thinks fit towards expenditure incurred or to be incurred in the performance of any of the statutory functions of the Corporation, including expenditure incurred in the acquisition of land.

23. *Budget and programme of work.*— (1) The Corporation shall, by such date in each year as may be prescribed, prepare and submit to the Government for approval an annual financial statement and the programme of work for the succeeding financial year.

(2) The annual financial statement shall show the estimated receipts and expenditure during the succeeding financial year in such form and details as may be prescribed.

(3) The Corporation shall be competent to make variations in the programme of work in the course of the year provided that all such variations and re-appropriations out of the sanctioned budget are brought to the notice of the Government by a supplementary financial statement.

(4) A copy each of the annual financial statement and the programme of work and the supplementary financial statement, if any, shall be placed before the Legislative Assembly as soon as may be after their receipt by the Government.

24. *Accounts and audit.*— (1) The Corporation shall maintain books of account and other books in relation to its business and transactions in such form, and in such manner, as may be prescribed.

(2) The accounts of the Corporation shall be audited by an auditor appointed by the Government, in the prescribed manner.

(3) As soon as the accounts of the Corporation are audited, the Corporation shall send a copy thereof with a copy of the report of the auditor thereon to the Government.

(4) The Government shall cause the accounts of the Corporation together with the audit report thereon forwarded to it under sub-section (3) to be laid annually before the Legislative Assembly.

25. *Concurrent and special audit of accounts.*— (1) Notwithstanding anything contained in section 24, the Government may order that there shall be concurrent audit of the accounts of the Corporation by such persons as it thinks fit. The Government may also direct a special audit to be made by such person as it thinks fit of the accounts of the Corporation relating to any particular transaction or class or series of transactions or to a particular period.

(2) When an order is made under sub-section (1), the Corporation shall present or cause to be presented for audit such accounts and shall furnish to the person appointed under sub-section (1) such information as the said person may require for the purpose of audit.

CHAPTER V

Supplementary and Miscellaneous Provisions

26. *Furnishing of returns etc.*— (1) The Corporation shall furnish to the Government such returns, statistics, reports, accounts and other information with respect to its conduct of affairs, properties or activities or in regard

to any proposed work or scheme as the Government may from time to time require.

(2) The Corporation shall, in addition to the audit report referred to in section 24, furnish to the Government an annual report on its working as soon as may be after the end of each financial year in such form and detail as may be prescribed, and a copy of the annual report shall be placed before the Legislative Assembly as soon as may be after it is received by the Government.

27. *Recovery of sums due to the Corporation as arrears of land revenue.*— All sums payable by person to the Corporation or recoverable by it by or under this Act and all charges or expenses incurred in connection therewith shall, without prejudice to any other mode of recovery, be recoverable as arrears of land revenue on the application of the Corporation.

28. *Default in performance of duty.*— (1) If the Government is satisfied that the Corporation has made a default in performing of any duty or obligation imposed or cast on it by or under this Act, the Government may fix a period for the performance of that duty or obligation and give notice to the Corporation accordingly.

(2) If, in the opinion of the Government, the Corporation fails or neglects to perform such duty or obligation within the period so fixed for its performance, it shall be lawful for the Government to supersede and reconstitute the Corporation, as it deems fit.

(3) After the supersession of the Corporation and until it is re-constituted in the manner laid down in Chapter II, the powers, duties and functions of the Corporation under this Act shall be carried on by the Government or by such officer or officers or body of officers as the Government may appoint for this purpose from time to time.

(4) All properties vested in the Corporation shall, during the period of supersession, vest in the Government.

29. *Dissolution of Corporation.*— (1) Where the Government is satisfied that the purposes for which the Corporation was established under this Act have been substantially achieved so as to render the continued existence of the Corporation in the opinion of the Government unnecessary, the Government may, by notification in the Official Gazette, declare that the Corporation shall be dissolved with effect from such date as may be specified in the notification, and the Corporation, shall be deemed to be dissolved accordingly.

(2) From the said date—

(a) all properties, funds and dues which are vested in, or realizable by, the Corporation shall vest in, or be realizable by, the Government;

(b) all liabilities which are enforceable against the Corporation shall be enforceable against the Government.

30. *Power to make rules.*— (1) The Government, after consultation with the Corporation in regard to matters concerning it, may, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that, consultation with the Corporation shall not be necessary on the first occasion of the making of rules under this section, but the Government shall take into consideration any suggestions which the Corporation may make in relation to the amendment of such rules after they are made.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) under section 6, the honorarium and compensatory allowance of the directors of the Corporation;

(b) under section 12, the conditions of appointment and service and the scales of pay of the Managing Director and the Chief Accounts Officer of the Corporation;

(c) under section 18, the sums of money to be kept by the Corporation in current and deposit accounts;

(d) under section 20, the conditions subject to which the Corporation may borrow;

(e) under section 23, the date by which the annual financial statement and programme of work shall be submitted by the Corporation to the Government and the form and details of preparing such statement;

(f) under section 24, the form and manner of maintaining accounts;

(g) under section 26, the form of, and the details to be given in, the annual report;

(h) the fees which may be charged by the Corporation;

(i) any other matter which has to be, or may be, prescribed by rules.

(3) All rules made under this section shall be laid for not less than fourteen days before the Legislative Assembly as soon as possible after they are made, and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid, or the session immediately following.

31. *Power to make regulations.*— (1) The Corporation may, with the previous approval of the Government, make regulations consistent with this Act and the rules made thereunder to carry out, the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for:—

(a) under section 7(1), the time and place of meetings of the Corporation and the procedure to be followed in regard to the transaction of business at such meetings;

(b) under section 12, the conditions of appointment and service and the scales of pay of officers and servants of the

Corporation, other than the Managing Director and the Chief Accounts Officer;

(c) under section 18(3), the officers of the Corporation who may operate its accounts;

(d) any other matter which has to be, or may be, provided by regulations.

(2) All regulations made under this section shall be published in the Official Gazette and shall be laid for not less than fourteen days before the Legislative Assembly as soon as possible after they are made, and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid, or the session immediately following.

32. *Protection of action taken in good faith.*— No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder.

33. *Notice of suit and limitation of suits against the Corporation, Committees, Officers and servants for acts done in pursuance of execution of this Act.*— (1) No suit shall lie against the Corporation or against any Committee constituted under this Act or against any Officer, or servant of the Corporation in respect of any act done in pursuance or the execution or intended execution of this Act, or in respect of any alleged neglect, or default in the execution of this Act—

(a) unless it is commenced within six months after the accrual of the cause of action; and

(b) until the expiration of two months after the notice in writing has been, in the case of the Corporation or its Committee, delivered or left at the Corporation's office and in the case of an Officer or servant of the Corporation, delivered to him or left at

his office or place of abode; and all such notices shall state with reasonable particulars the cause of action and the name and place of abode of the intending plaintiff and of his advocate, pleader, or agent, if any, for the purpose of the suit.

(2) If the defendant in any such suit is an officer, or servant of the Corporation, payment of any sum or part thereof payable by him in or in consequence of the suit may, with the sanction of the corporation, be made from the Corporation funds.

34. *Directors, officers and staff of Corporation to be public servants.*— All directors, officers and servants of the Corporation shall, when acting or purporting to act in pursuance of any of the provisions of this Act, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

35. *Power to remove doubts and difficulties.*— (1) If any doubt or difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Official Gazette, make provisions or give such direction not inconsistent with the express provisions of this Act, as may appear to it to be necessary or expedient for the removal of the doubt or difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the Legislative Assembly.

Statement of Objects and Reasons

The Bill seeks to make special provision for developing human resources in the State of Goa by imparting required training, to the unemployed persons and to the work force in the State of Goa so as to make available the trained and skilled personnel for all types of services like housekeeping, security, maintenance and operation, gardening, etc.,

to various Government Departments, Government Undertakings, autonomous bodies, social institutions, business establishments, individuals, etc. in the State of Goa, and also to assist unemployed persons to get gainful employment.

The Bill also seeks to establish Human Resource Development Corporation for the aforesaid purpose.

This Bill seeks to achieve above objects.

Financial Memorandum

The Bill seeks to provide grants, subventions, loans and advances and capital contribution to the Corporation under the Act to be enacted.

All grants, subventions, loans and advances and capital contribution made shall be on such terms and conditions as the Government may, after consulting the Corporation, determine.

Memorandum Regarding Delegated Legislation

Clause 1(3) of the Bill empowers the Government to issue notification for appointing the date to bring into force the Act.

Clause 6(2) of the Bill empowers the Government to frame rules to specify the amount of honorarium or compensatory allowance that the Directors of the Corporation nominated under clause 4(1)(f) of the Bill shall be entitled to draw.

Clause 8(2) of the Bill empowers the Government to issue an order to suspend or remove from office any Director of the Corporation.

Clause 12(3) of the Bill empowers the Government to frame rules as regards the conditions of appointment and service and scale of pay of the Managing Director and Chief Accounts Officer.

Clause 18(2) of the Bill empowers the Government to frame rules to specify the sum of money, which the Corporation may keep in Current or Deposit account.

Clause 20 of the Bill empowers the Government to frame the rules specifying conditions subject to which the Corporation may borrow money from the open market or otherwise.

Clause 23(1) of the Bill empowers the Government to frame rules to specify the date for preparation and submission of annual financial statement and the programme of work in each year.

Clause 23(2) of the Bill empowers the Government to frame rules to specify the form and details of the estimated receipts and expenditure during the succeeding financial year.

Clause 24(1) of the Bill empowers the Government to frame rules to specify the form and manner in which the Corporation shall maintain books of accounts and other books in relation to its business and transactions.

Clause 24(2) of the Bill empowers the Government to frame rules to specify the manner in which an auditor shall be appointed by the Government.

Clause 26(2) of the Bill empowers the Government to frame rules to specify the form and details in which the Corporation shall furnish to the Government an annual report of its working.

Clause 30 of the Bill empowers the Government to make rules to carry out the purposes of the Act.

Clause 31 of the Bill empowers the Corporation to make regulations with the previous approval of the Government.

Clause 35 of the Bill empowers the Government to issue an order for the removal of any doubt or difficulty which arises in giving effect to the provisions of the Act.

These delegations are of normal character.

Assembly Hall,
Porvorim-Goa.
1st August, 2012.

MANOHAR PARRIKAR
Chief Minister

Assembly Hall,
Porvorim-Goa.
1st August, 2012.

N. B. SUBHEDAR
Secretary to the Legislative
Assembly of Goa.

Governor's Recommendation under Article 207 of the
Constitution of India

In pursuance of the Article 207 of the Constitution of India, I, Shri Bharat Vir Wanchoo, Governor of Goa, hereby recommend to the Legislative Assembly of Goa, the introduction and consideration of the Goa Human Resource Development Bill, 2012, (Bill No. 22 of 2012).

LA/LEGN/2012/1302

The following bill which was introduced in the Legislative Assembly of the State of Goa on 3rd August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Indian Stamp (Goa Amendment)
Bill 2012

(Bill No. 26 of 2012)

A

BILL

*further to amend the Indian Stamp Act, 1899
(2 of 1899), as in force in the State of Goa.*

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Indian Stamp (Goa Amendment) Act, 2012.

(2) It shall come into force from the date of its publication in the Official Gazette.

2. *Insertion of new section 3A.*— After section 3 of the Indian Stamp Act, 1899 (2 of 1899), as in force in the State of Goa, the following section shall be inserted, namely:—

“3A”. *Instrument of grant or renewal of a mining lease chargeable with duty.*— (1)

Notwithstanding anything contained in any other provisions of this Act and rules made thereunder, on every instrument of grant or renewal of a mining lease, the stamp duty chargeable shall be equivalent to the fifteen per cent of the amount of royalty that would accrue out of the annual extraction of minerals permitted under the Environmental Clearance issued for such mining lease under the relevant law in force, multiplied by the period of the lease.

Explanation:— For the purposes of sub-section (1), the average royalty of the highest grade of minerals from the year of commencement of the Indian Stamp (Goa Amendment) Act, 2012 shall be taken into consideration.

(2) The duty chargeable under this section shall be paid in cash in any Government treasury or Government Sub-treasury and the receipt or challan therefore in duplicate shall be given by the officer in charge thereof. One copy of receipt or challan shall be submitted alongwith an application for grant or renewal of a mining lease made as per the provisions of relevant law in force. Another copy shall be presented to the Chief Controlling Revenue Authority, at the time of execution of lease deed, who shall, after due verification that the duty has been paid in cash, make an endorsement to that effect on the instrument to the following effect, after cancelling such receipt or challan so that it cannot be used again, namely:—

“Stamp duty of Rs. paid in cash vide Receipt/Challan No. dated the”

.....
Signature and Seal
of the Chief Controlling
Revenue Authority

(3) Where an application for renewal of a mining lease has been already made to the State Government prior to the expiry of the lease but renewal of the lease has not been

granted by the State Government or the mining lease whose period is deemed to have been extended as per provisions contained in the relevant law in force by a further period till the State Government passes an order thereon, the stamp duty payable under sub-section (1) shall be paid by the applicant within a period of sixty days from the date of commencement of the Indian Stamp (Goa Amendment) Act, 2012, in the manner stated in sub-section (2) above.

(4) If the application for grant or renewal of mining lease is rejected by the State Government then the applicant shall be entitled for refund of full stamp duty paid by him without interest. In case of a mining lease whose period is deemed to have been extended by a further period till the State Government passes an order thereon and the State Government at a later date passes an order rejecting the renewal of the lease, the applicant shall be entitled for refund of such amount of stamp duty as arrived at by deducting from the total amount of stamp duty paid, the stamp duty chargeable in respect of such mining lease till the date of such rejection order:

Provided that no such refund shall be made if the order rejecting the application is challenged or the time limit for presenting an application for revision of the order of rejection is not expired".

Statement of Object and Reasons

There are around 337 mining leases which have been granted by the Government of Goa to various parties. These leases expired on 21-11-2007. Prior to the said date of expiry, the lessees submitted their applications for renewal or extension of the mining leases for further term of 20 years. However, due to various reasons the Government of Goa was not in a position to execute lease deeds for the purpose of renewal or extension of the said lease but leases got extended till the State Government passes an order on such applications by virtue of provisions contained in sub-rule (6) of rule 24A of the Mineral

Concession Rules, 1960, and, as a consequence, the Government of Goa was deprived of a very large amount of revenue by way of stamp duty which otherwise would have been payable by the lessees on the renewal of mining leases. In order to enable the Government of Goa to recover the said amount of stamp duty which would otherwise be lost, it is proposed to make a provision to the Indian Stamp Act, 1899 (2 of 1899), as in force in the State of Goa, in order to provide for payment of stamp duty within a period of 60 days from the date of commencement of the Indian Stamp (Goa Amendment) Act, 2012, and thus recover the same on all such pending applications. It is also proposed to levy, on every instrument of grant or renewal of a mining lease, the stamp duty equivalent to the 15% of the amount of royalty that would accrue out of the annual extraction of minerals permitted under the environmental clearance issued for a mining lease under the relevant law in force, multiplied by the period of lease.

The Bill, accordingly, seeks to insert a new section 3A in the Indian Stamp Act, 1899 (2 of 1899), as in force in the State of Goa.

This Bill seeks to achieve the above objects.

Financial Memorandum

No financial implications are involved in this Bill. However, it would generate additional revenue.

Memorandum Regarding Delegated Legislation

No delegated legislation is involved in this Bill.

Porvorim-Goa.
1st August, 2012.

ADV. FRANCIS D'SOUZA
Minister for Revenue

Assembly Hall,
Porvorim-Goa.
1st August, 2012.

N. B. SUBHEDAR
Secretary to the Legislative
Assembly of Goa

Governor's Recommendation under Article 207 of the Constitution of India

In pursuance of Article 207 of the Constitution of India, I, Bharat Vir Wanchoo, the Governor of Goa, hereby recommend the introduction and consideration of the Indian Stamp (Goa Amendment), Bill, 2012, by the Legislative Assembly of Goa.

BHARAT VIR WANCHOO
Governor of Goa

Date:- 1st August, 2012.

LA/LEGN/2012/1303

The following bill which was introduced in the Legislative Assembly of the State of Goa on 3rd August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Value Added Tax
(Sixth Amendment) Bill, 2012

(Bill No. 23 of 2012)

A

BILL

further to amend the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005).

Be it enacted by the Legislative Assembly of Goa, in the Sixty-third Year of the Republic of India, as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa Value Added Tax (Sixth Amendment) Act, 2012.

(2) It shall come into force at once except sections 3, 4(i) which shall be deemed to have come into force on 1st day of April, 2012 and section 4(ii) on 1st day of April, 2011.

2. *Amendment of section 6.*— In section 6 of the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005) (hereinafter referred to as the "principal Act"), in sub-section (2), for the words "by Notification", the expression "by Notification in the Official Gazette, to take effect, either prospectively or retrospectively, from the date as may be mentioned therein", shall be substituted.

3. *Amendment of section 9.*— In section 9 of the principal Act,—

(i) in sub-section (2), for clause (viii), the following clause shall be substituted, namely:—

"(viii) in respect of goods used in the manufacture or processing of finished goods dispatched other than by way of sales outside the State except in case of input tax credit claimed against entry tax paid under sub-section (6) of this section;"

(ii) in sub-section (6), the following proviso shall be inserted, namely:—

"Provided that in respect of finished products dispatched by way other than sales, the input tax credit on goods other than those covered by Schedule 'G' shall be to the extent it exceeds the rate specified under sub-section (1) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)."

4. *Amendment of section 10.*— In section 10 of the principal Act,—

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) After adjustment under sub-section (1), the excess input tax credit of a registered dealer, other than those covered under sub-section (3), shall be carried over as an input tax credit to the subsequent period:

Provided that in case input tax credit at the end of the last quarter of the year exceeds

rupees two lakhs, the dealer shall file an application in the prescribed form within three months to carry forward input tax credit and the Commissioner shall decide the same within three months from the date of filing of such application and thereafter the excess input tax credit, if any, shall be allowed to be carried forward accordingly:

Provided further that if any assessment, is done for the period then only the excess input tax credit as determined in the said assessment shall be allowed to be carried forward.”;

(ii) in sub-section (4), the “*Explanation*” thereto shall be omitted.

5. *Amendment of section 24.*—In section 24 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Every registered dealer shall file a correct and complete return in such form, in such manner, for such period, by such date and to such authority, as may be prescribed. In addition, the Commissioner may require the registered dealers to furnish any data, for the purpose of collecting statistics, relating to any matter dealt with in connection to this Act.”;

(ii) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Any return filed under sub-section (1), without proper payment of tax as due, shall not be considered as a return filed under the provisions of this Act and therefore shall be liable for penalty.”.

6. *Amendment of section 70.*— In section 70 of the principal Act,—

(i) in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that except in case of oil marketing company, the turnover of goods

listed in Schedule ‘D’ and Schedule ‘G’ shall not be included in the gross turnover of sales specified above.”;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a copy of such report within the period prescribed, the Commissioner shall impose on him, in addition to any tax payable, a penalty of rupees one hundred per day for each day of delay, subject to a maximum of rupees twenty-five thousand cumulatively.”;

(iii) the sub-section (4) shall be omitted.

7. *Amendment of section 75.*— In section 75 of the principal Act,—

(i) in sub-section (2), in clause (a), the following shall be added at the end, namely:—

“and file at the check post such declaration or document as may be prescribed.”;

(ii) in sub-section (5), the expression “or twenty per cent of the value of goods, whichever is higher” shall be omitted.

8. *Insertion of new section 89A.*— In the principal Act, after section 89, the following section shall be inserted, namely:—

“89A. *Incentive Scheme to Industry.*— (1) Notwithstanding anything contained in this Act or the Rules or notifications, issued thereunder, the Government may frame Scheme under this Act to grant some incentives to the Industrial units in the State.”;

(2) The Scheme framed by the Government under this sub-section (1) shall, as soon as may be after it is framed, be laid before the Legislative Assembly of Goa while it is in session for a total period of not less than

fourteen days, which may be comprised in one session or two or more successive sessions, and shall, unless some later date is appointed, take effect from the date of its publication in the Official Gazette subject to such modification or annulment as the Legislative Assembly of Goa may, during the said period, agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.”.

9. *Repeal and Saving.*— (1) The Goa Value Added Tax (Amendment) Ordinance, 2012 (Ordinance No. 4 of 2012) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Statement of Objects and Reasons

The Bill seeks to amend section 6(2) of the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005)(hereinafter referred to as the “said Act”), so as to empower the Government to issue notifications as specified therein, either prospectively or retrospectively.

The Bill further seeks to substitute clause (viii) of sub-section (2) of section 9 of the said Act, so as to make clear the case about allowing input tax credit against entry tax paid under sub-section (6) thereof which is also sought to be amended to provide the extent of input tax credit in respect of finished products dispatched by way other than sales.

The Bill also seeks to substitute sub-section (2) of section 10 of the said Act so as to allow to carry forward of excess input tax credit at the end of the year in the manner and subject to such conditions as provided therein; and further to omit “*Explanation*” to sub-section (4) thereof so as to do away with the provision relating to reversal and to carry forward of input tax credit proportionate to the closing stock at the end of the year.

The Bill also seeks to substitute sub-section (1) of section 24 of the said Act, so as to enable the Government to prescribe different periods other than a quarter, for different classes of dealers including annual return for small dealers and further seeks to insert a new sub-section (4) in said section 24 so as to make clear that a return filed without proper payment of tax would not be considered as a return filed as per the provisions of the said Act and would be liable for penalty.

The Bill also seeks to insert a proviso in sub-section (1) of section 70 of the said Act so as to exclude the dealers other than oil marketing companies, dealing in goods listed in Schedule ‘D’ and ‘G’ to the said Act from getting their accounts audited as per the provisions of section 70 of the said Act and further seeks to substitute sub-section (3) of said section 70 so as to reduce the maximum penalty specified for non-compliance with the requirements of sub-section (1) of section 70, from Rs. 1,00,000/- to Rs. 25,000/- and simultaneously omit sub-section (4) of said section 70 to do away with the power of the Commissioner to remit the said penalty.

The Bill also seeks to amend clause (a) of sub-section (2) of section 75 of the said Act so as to make it mandatory for the driver or person in charge of vehicle or carrier of goods, to file at the Check Post such documents or declaration as may be prescribed by the Government and further seeks to amend sub-section (5) of said section 75 so as to impose the penalty equal to twice the amount of tax leviable under that sub-section.

The Bill seeks to insert a new section 89A in the said Act so as to empower the Government to frame Scheme for granting incentives to the industrial units in the State of Goa.

The Bill also seeks to repeal the Goa Value Added Tax (Amendment) Ordinance, 2012 (Ordinance No. 4 of 2012) promulgated by the Governor of Goa on 01-06-2012.

This Bill seeks to achieve the above objects.

Financial Memorandum

No financial implications are involved in this Bill.

Memorandum Regarding Delegated Legislation

Clause 4 of the Bill empowers the Government to prescribe by way of rules the form of filing application.

Clause 5 of the Bill empowers the Government to prescribe by way of rules, the form, manner and period of filing return by a registered dealer and the date by which and the authority to whom the same shall be filed.

Clause 6 of the Bill empowers the Government to prescribe by way of rules the period within which a copy of report of audit to be submitted.

Clause 7 of the Bill empowers the Government to frame rules specifying the declaration or document to be filed at the Check post.

Clause 8 of the Bill empowers the Government to frame Scheme for granting incentives to the Industrial Units in the State of Goa.

These delegations are of normal character.

Assembly Hall, SHRI MANOHAR PARRIKAR
Porvorim-Goa. Chief Minister/Finance Minister
31st July, 2012.

Assembly Hall, N. B. SUBHEDAR
Porvorim-Goa. Secretary to the Legislative
31st July, 2012. Assembly of Goa

Governor's Recommendation under Article 207 of
the Constitution of India

In pursuance of Article 207 of the Constitution of India, I, Bharat Vir Wanchoo, the Governor of Goa hereby recommend to the Legislative Assembly of Goa, the

introduction and consideration of the Goa Value Added Tax (Sixth Amendment) Bill, 2012.

Raj Bhavan,
Date: 1-8-2012.

BHARAT VIR WANCHOO
Governor of Goa

ANNEXURE

Bill No. 23 of 2012

Extract of the Goa Value Added Tax Act, 2005 (Act 9 of 2005)

6. *Reimbursement and Exemption of Tax.*— (1) Tax collected under this Act on purchases made by specialized agencies of United Nations Organizations or Diplomatic Mission/Consulates or Embassies of any other country and their diplomats shall be reimbursed in such manner and subject to such conditions as may be prescribed.

(2) In respect of any goods not entitled for input tax credit and covered by Schedule 'C' appended hereto purchased within the State on payment of tax under this Act, the Government may subject to such conditions as it may impose, by Notification exempt subsequent sales thereof from payment of output tax for such period as may be notified.

(3) In respect of any goods other than capital goods and such other goods as specified in Schedule 'G' appended to this Act, or in sub-section (2) of section 9, used in the manufacturing or processing of finished products dispatched other than by way of sales, the Government may, notwithstanding anything contained in section 9, by notification, allow input tax credit in excess of the rate of tax specified in sub-section (1) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) on such goods purchased within the State subject to such terms and conditions as may be specified in the notification.

(4) Notwithstanding anything contained in sub-section (2), the Government may, in respect of any goods covered by Schedule 'G' appended to this Act, by notification, exempt the sales inter-se dealers thereof, from levy and payment of output tax, when effected within the State, on such conditions as may be specified therein, and any such sales shall not be treated as "subsequent sale" as provided, in sub-section (2).

9. *Input Tax Credit.*— (1) Subject to such conditions and restrictions as may be prescribed Input Tax Credit either partially or wholly shall be allowed for the tax paid during the tax period in respect of goods including capital goods purchased and/or taken on hire or leased to him within Goa, other than those specified in Schedule 'G' and/or such other goods as may be notified from time to time by the Government, provided, the goods purchased are for resale in Goa or for sale in course of Inter State Trade or in course of export outside the territory of India or used by him as raw materials/capital goods in the manufacture or processing of taxable goods in Goa or for sale by transfer of right to use.

(2) No input tax credit under sub-section (1) shall be claimed or be allowed to a registered dealer:—

(i) in respect of goods purchased on payment of tax if such goods are not sold because of theft or destruction for any reason;

(ii) in respect of stock of goods remaining unsold at the time of closure of business;

(iii) in respect of any taxable goods under the Act purchased by him from another registered dealer for resale but given away by way of free samples or gifts;

(iv) in respect of capital goods/industrial inputs and packing materials, covered under Schedule 'B' of the Act, if said goods are utilized for the purposes other than those covered in the prescribed declaration;

(v) in respect of goods purchased from a dealer who has opted for composition of tax under sub-section (1) of section 7;

(vi) in respect of capital goods or capital assets:—

(a) purchased or paid prior to appointed day;

(b) capital expenditure incurred prior to the date of registration under this Act;

(c) capital goods not connected with the business of the dealer;

(d) capital goods used in the manufacture of goods or providing services which are not liable to tax under this Act;

(e) capital goods used in generation of energy/power including captive power;

(f) motor cars, its accessories and spare parts.

(vii) in respect of taxable goods sold within the State or in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), exempted from payment of tax under any specific notification issued under this Act or under the said Central Sales Tax Act, 1956;

(viii) in respect of goods used in the manufacture or processing of finished goods dispatched other than by way of sales outside the State.

(ix) in respect of purchase of motor vehicle including car, three wheeler and two wheeler under this Act or tax paid under the Goa Tax on Entry of Goods Act, 2000 (Act 14 of 2000) on import of such motor vehicle before grant of registration mark under the Motor Vehicles Act, 1988 (Central Act 58 of 1988), when such vehicle is resold as true value vehicle or otherwise by a registered dealer under this Act;

(x) in respect of raw material used in the manufacture of ready mixed concrete;

(xi) in respect of naphtha and furnace oil used either as raw material or fuel by chemical fertilizer industry;

(xii) ice cream, alcoholic beverages including beer and wine and non-alcoholic beverages including packed juices, aerated water and soft drinks served in party, factory or industrial canteens, clubs, or served by caterer, for consumption at any place other than hotel/restaurant;

(xiii) condemned vehicles.

(3) If goods purchased are intended for use specified under sub-section (1) and are subsequently used fully or partly, for purposes other than those specified under the said sub-section, or loss of goods arising out of theft or destruction for any reason or the stock of goods remaining unsold at the time of closure of business, the input tax credit availed at the time of such purchase shall be reduced from the tax credit for the period during which the said utilization has taken place provided

that if part of the goods purchased are utilized otherwise, the amount of reverse tax credit shall be proportionately calculated.

(4) Input tax credit shall be allowed to the registered dealer, subject to restrictions of sub-section (2), in respect of tax charged to him by a registered seller on taxable sales of goods made to him for the purpose of the business within three months prior to the date of his registration provided that no input tax credit shall be allowed in respect of goods which have been sold or otherwise disposed of prior to the date of registration.

(5) (a) where a registered dealer has availed of the input credit on any goods and the same goods are not used in the course of his business, input tax credit so availed becomes repayable in the tax period following the date on which these goods were put to such other use;

(b) where such goods were wholly or mainly used or are intended for use in sale of taxable goods prior to change of use, tax shall be calculated on the prevailing market value of such goods at the time of change of use.

(6) Any registered dealer who has paid entry tax under the Goa Tax on Entry of Goods Act, 2000 (Goa Act 14 of 2000), either on raw material or on capital goods, other than on goods covered by Schedule 'G' and/or sub-section (2) of this section, brought by him into the local area for use or consumption in the manufacture or processing of goods within the State, shall be entitled for input tax credit under sub-section (1) of this section.

(7) Balance unclaimed input tax credit of capital goods shall not be allowed in case of closure of business.

(8) The registered dealer shall be eligible for input tax credit on stock held on the appointed day, towards the tax paid under the earlier law subject to such conditions as may be prescribed. The period and the date from which such input tax credit is to be apportioned shall be as notified.

(9) The deduction of input tax credit on capital goods under this section shall be allowed in two equal annual installments after the close of the respective year as under:

(i) in case of existing units, upon installation of such capital goods, and

(ii) in case of new units, upon commencement of commercial production.

10. Input Tax Credit Exceeding Tax Liability.—

(1) Subject to the provisions of sub-section (2), if the input tax credit of a registered dealer, determined under section 9 of this Act for a period exceeds the tax liability for that period, the excess credit shall be set off against any outstanding tax, penalty or interest under this Act or earlier law or under the Goa Tax on Entry of Goods Act, 2000 (Act 14 of 2000) or under the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

(2) After adjustment under sub-section (1), the excess input tax credit of a registered dealer other than those covered under sub-section (3) shall be carried over as an input tax credit to the subsequent period upto the end of the respective financial year and if there is any unadjusted input tax credit thereof, the same shall be refunded in the prescribed manner within three months, from the date of filing of the last quarterly return of the respective financial year or from the date of filing an application by the dealer claiming such refund, whichever is later.

(3) In case of exporter selling goods outside the territory of India, the excess input tax credit, if any, admissible as per provision of this Act, proportionate to the goods exported and carried over at the end of any quarter shall be refunded in the prescribed manner within 3 months from the date of filing of application claiming the refund.

(4) Notwithstanding anything contained in sub-section (2), the Government may allow, carry forward of excess input tax credit, if any, to such shorter period and grant refund of unadjusted portion thereof in respect of such goods to such registered dealer on such conditions and at such proportion as may be specified by the Notification in the Official Gazette.

Explanation.— (i) For the purposes of sub-sections (1) and (2) of this section, the input tax credit proportionate to the closing stock (other than stock of processed goods) at the end of financial year, shall be reversed and such amount shall be carried forward to the succeeding financial year as input tax credit corresponding to the opening stock. The term "processed goods", for the purposes of this sub-section, means finished or semi-finished goods.

24. *Returns and Payment of Tax, etc.*— (1) Every registered dealer shall file a correct and complete quarterly return in such form, by such date and to such authority, as may be prescribed. In addition to any data required for proper quantification of tax, the Commissioner may require the registered dealers to furnish data for the purpose of collecting statistics relating to any matter dealt with, by or in connection to this Act.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), every registered dealer may be required to furnish correct and complete returns in such form for such period, by such dates, and to such authority, as may be prescribed:

Provided that the Commissioner may, subject to such terms and conditions as may be prescribed, exempt any such dealer from furnishing such returns or permit any such dealer to furnish them for such different periods.

(3) If any dealer having furnished a return under sub-section (1), discovers any omission or incorrect statement therein, he may furnish a revised return at any time before a notice for assessment is served on him in respect of the period covered by the said return or before the expiry of one year following the last date prescribed for furnishing the said return, whichever is earlier.

70. *Accounts to be audited in certain Cases.*—

(1) Every dealer liable to pay tax shall, if his gross turnover of sales exceeds rupees one crore in any year, or in any other case, if the amount of input tax credit claimed by him in any year exceeds rupees ten lacs, get his accounts in respect of such year audited by an accountant by such date and in such manner as may be prescribed and furnish within the prescribed period the report of such audit in the prescribed form duly verified and signed by such accountant and setting forth such particulars and certificates as may be prescribed.

(2) For the purposes of this section, "Accountant" means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (Central Act 38 of 1949).

(3) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a copy of such report within the period prescribed, the Commissioner shall, impose on him, in addition to any tax payable, a penalty of rupees one thousand

plus rupees one hundred per day during the first sixty days of default and rupees two hundred fifty per day thereafter, subject to a maximum of rupees one lac cumulatively.

(4) Notwithstanding anything contained in sub-section (3), the Commissioner, upon an application from the dealer and subject to such rules as may be prescribed, remit the whole or any part of the penalty imposed on such defaulting dealer.

75. *Establishment of Check Posts for Inspection of Goods in Transit.*— (1) The Government may, with a view to prevent or check avoidance or evasion of tax, by notification in the Official Gazette, direct establishment of the check post or barrier at such places as may be specified in the notification and every officer who exercise powers and discharges his duties at such check post by way of inspection of documents produced and goods being moved, shall be in-charge of such check post or barrier.

(2) The driver or person in-charge of vehicle or carrier of goods in movement shall:—

(a) carry with him the records of the goods including "Challan", bills of sale or despatch memos and prescribed declaration form or way bill duly filled in and signed by the consignor of goods carried;

(b) stop the vehicle or carrier at every check post set up under sub-section (1) or at any other place as desired by an officer authorized by the Commissioner in this behalf;

(c) produce all the documents relating to the goods before the officer in charge of the check post or the authorized officer;

(d) give all the information in his possession relating to the goods;

(e) allow the inspection of the goods and search of the vehicle by the officer in charge of the check post or any authorized officer.

(3) Where any goods are in movement within the territory of the State of Goa, an officer empowered by the Government in this behalf may stop the vehicle or the carrier or the person carrying such goods, for inspection, at any place within his jurisdiction and provisions of sub-section (2) shall *mutatis mutandis* apply.

(4) Where any goods in movement are without documents, or are not supported by documents as

referred to in sub-section (2), or documents produced appear to be false or forged, the officer in charge of the check post or the officer empowered under sub-section (3), may—

(a) direct the driver or the person in charge of the vehicle or carrier of the goods not to part with the goods in any manner including by transporting or re-booking, till a verification is done or an enquiry is made, which shall not take more than seven days;

(b) seize the goods for reasons to be recorded in writing and shall give receipt of the goods seized to the person from whose possession or control they are seized.

(5) The officer in charge of the check post or the officer empowered under sub-section (3), after having given the person in charge of the goods a reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall, impose, for possession or movement of goods, whether seized or not, in violation of the provisions of clause (a) of sub-section (2) or for submission of false or forged documents, a penalty, equal to twice the amount of the tax leviable on such goods or twenty per cent of the value of goods, whichever is higher.

(6) During the pendency of the proceeding under sub-section (5) if any one prays for being impleaded as a party to the case on the ground of involvement of his interest therein, the said officer in charge of the check post or the empowered officer, on being satisfied, may permit him to be included as a party to the case; and thereafter, all provisions of this section shall *mutatis mutandis* apply to him.

(7) The officer in charge of the check post or the officer empowered under sub-section (3) may release the goods to the owner of the goods or to any person duly authorized by such owner, on payment of the penalty imposed under sub-section (5).

(8) Where the driver or person in charge of the vehicle or the carrier is found guilty of violation of the provisions of sub-section (2), the officer in charge of the check post or the officer empowered under sub-section (3) may detain such vehicle or carrier and after affording an opportunity of being heard to such driver or person in charge of the vehicle or the carrier, may impose a penalty on him as provided under sub-section (5).

(9) Where a transporter, while transporting goods, is found to be in collusion with dealer to avoid or evade tax, the officer in charge of the check post or the officer empowered under sub-section (3), shall detain the vehicle or carrier of such transporter and after affording him an opportunity of being heard and with prior approval in writing of the Commissioner may confiscate such vehicle or carrier.

LA/LEGN/2012/1304

The following bill which was introduced in the Legislative Assembly of the State of Goa on 3rd August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Municipalities (Amendment) Bill, 2012

(Bill No. 8 of 2012)

A

BILL

further to amend the Goa Municipalities Act, 1968 (Act No. 7 of 1969).

Be it enacted by the Legislative Assembly of the State of Goa in the Sixty-third Year of the Republic of India, as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa Municipalities (Amendment) Bill, 2012.

(2) It shall come into force at once.

2. *Amendment to section 10.*— In sub-section 1 of section 10 of the Goa Municipalities Act, 1968 (Act 7 of 1969), for the word “Director” the words “State Election Commission” shall be substituted.

Statement of Objects and Reasons

In terms of Article 243(K) and 243(Z) (A) of the Constitution of India, the superintendence, direction and control of the preparation of election rolls and the conduct

of election to the Municipalities shall be vested in the State Election Commission. The said articles further provide that the Legislation of a State may by law, make provisions with respect to all matters relating to, or in connection with, elections to the Municipalities. Since the State Election Commission is vested with the power to prepare electoral rolls it is imperative that the power of fixation of each Municipal area, the number and extent of wards into which such area shall be delimited ought to be with the State Election Commission. The Election Commission should likewise have the power to reserve seats for women, ST, SCs and OBCs.

In terms of section 10 of Goa Municipalities Act, the power of fixation and reservation of wards is with the Director of Municipal Administration.

Before every election, there are charges galore against the Government of misusing the office of the Director to delimit and reserve the wards in a manner that is beneficial to certain interested groups. In my opinion, there should be no room for any suspicion about the fairness of the electoral process at the Municipal Elections.

I therefore recommend that the word "Director" appearing in section 10 of the Goa Municipalities Act be replaced by the word "State Election Commission", thus empowering the State Election Commission to undertake delimitation of wards of Municipalities and of reservation of wards of Municipalities for women, OBCs, SCs and STs.

Financial Memorandum

No financial Memorandum envisaged.

Memorandum Regarding Delegated Legislation

Delegated legislation is envisaged which would extent amendment to rules in force which are of normal character.

Porvorim-Goa,
1st August, 2012.

VIJAI SARDESAI
MLA

Assembly Hall,
Porvorim-Goa,
1st August, 2012. Legislative Assembly of Goa.

N. B. SUBHEDAR
Secretary to the

ANNEXURE

Extracts of section 10(1) of the Goa Municipalities Act, 1968

10. Division of municipal area into wards and reservation of wards for women, 48 [Scheduled Castes, Scheduled Tribes and Other Backward Class].— (1) The Director shall from time to time by order published in the Official Gazette, fix for each municipal area the number and the extent of the wards into which such area shall be divided. The Director shall specify in the order the ward in which a seat is reserved for women but in so doing he shall ensure that such a seat its reserved from time to time by rotation in different wards of the municipal area. He shall by a like order specify the wards in which seats are reserved for 49[Scheduled Castes, Scheduled Tribes or the Other Backward Class], 50[including the seats for offices of Chairperson] having regard to the concentration of population of 51[those Castes, or Tribes, or as the case may be, of those class], in any particular wards.

Assembly Hall, N. B. SUBHEDAR
Porvorim-Goa, Secretary to the
1st August, 2012. Legislative Assembly of Goa.

LA/LEGN/2012/1329

The following bill which was introduced in the Legislative Assembly of the State of Goa on 6th August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa (Rajiv Gandhi IT Habitat Cancellation/Abolition and Regulation of Allotment of Plots) Bill, 2012

(Bill No. 27 of 2012)

A

BILL

*to provide for cancellation/abolition of
allotment of all plots in the Rajiv Gandhi IT*

Habitat in the State of Goa, as specified in the Schedule to this Act and for declaration of such allotments as null and void and non-existent in the eyes of law and to provide for refund of amounts paid by the allottees along with interest; with a view to regulate the Information Technology Habitat Centre and for the development of Information Technology Habitat, under the control of the Government of Goa; to provide for a new IT Habitat in the State of Goa and for matters connected and incidental thereto.

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

CHAPTER I

1. *Short title and commencement.*— (1) This Act may be called the Goa (Rajiv Gandhi IT Habitat–Cancellation/Abolition and Regulation of Allotment of Plots) Act, 2012.

(2) It shall come into force at once.

2. *Definitions.*— In this Act, unless the context otherwise requires,—

(a) “allottee” or “allottees” means the persons, companies, corporations, partnership firms or any other entity, who has/have executed a Lease Deed with the Info Tech Corporation of Goa Limited or in whose favour an Allotment Order has been issued by the Info Tech Corporation of Goa Limited for allotment of plot/plots at the Rajiv Gandhi IT Habitat, Dona Paula, Goa, and shall include those persons, companies, etc., who have availed of the benefits of the ‘Special Incentive Scheme for Plot Allottees of Rajiv Gandhi IT Habitat, Dona Paula,’ but shall not include those persons, companies etc., who have already surrendered their plots to the Info Tech Corporation of Goa Limited;

(b) “Government” means the Government of Goa;

(c) “Info Tech Corporation of Goa Limited” means the Info Tech Corporation of Goa Limited, a Government Company as defined under section 617 of the Companies Act, 1956 (Central Act 1 of 1956) and incorporated under the provisions of the said Act;

(d) “plot” means the sub-divided plot allotted by the Info Tech Corporation of Goa Limited to the Allottee either for setting up of Information Technology Software/Information Technology Enabled Service Industries or establishment of supporting facilities, like, residential buildings, restaurants, banks, malls, at the Rajiv Gandhi IT Habitat, Dona Paula, Goa.

CHAPTER – II

Cancellation/Abolition of Allotments

3. *Cancellation/Abolition of Allotments.*— (1) From the date of commencement of this Act, the allotment of all and whatsoever plots made in favour of the allottees by the Info Tech Corporation of Goa Limited at the Rajiv Gandhi IT Habitat, Dona Paula, Goa, shall stand cancelled/abolished and the said plots shall be deemed to have been vested with the Info Tech Corporation of Goa Limited free from all claims, charges, encumbrances, liens, whatsoever, with immediate effect.

(2) Every allotment of plots specified in the Schedule to this Act, on and from the commencement of this Act, shall be deemed to have been cancelled/abolished and shall, with effect from that date, be deemed to have been nullified and all grants and matters concerning the allotment including permissions, clearances, no objection certificates, building and development permissions, licences, approvals, etc., obtained by the allottees under any law for the time being in force shall also stand nullified.

(3) Every allottee whose allotment of plot has been cancelled/abolished as specified in this section shall be given by the Info Tech

Corporation of Goa Limited, an amount equal to the amount of premium/lease rent/license fee paid by the allottee along with simple interest at the rate of ten percent per annum. The Info Tech Corporation of Goa Limited shall, however, not be liable or responsible, in any manner, in respect of the loans, dues, etc., if any, incurred/obtained by the allottees for procuring allotment of the said plots or in connection with the plots allotted.

(4) The Info Tech Corporation of Goa Limited shall, within a period of sixty days from the date of coming into force of this Act, refund to the allottees specified in sub-section (3), the premium, lease rent, license fee, security deposit, if any, installments, if any, paid to the Info Tech Corporation of Goa Limited by the said allottees till the date of such cancellation/abolition alongwith simple interest at the rate of ten percent per annum on the said amounts.

(5) Save as provided hereinabove, no other amounts or compensation of whatsoever nature, shall be claimable by any allottee in respect of any financial or other loss, damage, hardship, etc., caused to such allottee on account of the cancellation/abolition of allotment of plots under this section.

(6) Notwithstanding anything to the contrary contained in any other law for the time being in force, from the date of coming into force of this Act, all permissions, licenses, no objection certificates, clearances, approvals, etc., if any, obtained by a allottee from any statutory/Government authority/local authority for commencement of any works in respect of the said plots shall stand annulled forthwith and shall be of no effect.

4. Re-allotment of plots with Government approval.— (1) All re-allotment of plots shall be made by the Info Tech Corporation of Goa Limited only with the prior approval of the Government and such allotment shall be made only by inviting bids by advertisement to that effect in the newspaper or by any other known mode of disposal of Government property.

(2) Notwithstanding anything contained in sub-section (1), the Info Tech Corporation of Goa Limited, may, at the request of the Government, allot any such plots to any Government Department, Government Corporation or Government company for their own use.

(3) The Government may give such directions to the Info Tech Corporation of Goa Limited, as it deems fit.

5. Overriding Effect.— (1) The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any Act, custom or usage, contract, Order, Judgment, Decree of any Court or Tribunal or any other authority.

(2) Notwithstanding anything contained in any other law for the time being in force or any Judgment, Decree or Order or injunction or Stay of any Court, Tribunal or any other Authority,—

(a) every such allotment shall stand cancelled/abolished and the plots specified in the Schedule to this Act, shall hereby stand vested with the Info Tech Corporation of Goa Limited in terms of this Act;

(b) no suit or other legal proceedings shall be instituted, maintained or continued in any Court or Tribunal or any other authority against the Government or any person or authority whatsoever and all pending suits, applications, etc., filed under any local or special law shall stand abated forthwith.

(c) no Court shall enforce any Decree or Order or Injunction or Stay on any ground whatsoever.

6. Protection of action taken in good faith.— No suit, prosecution or other legal proceeding shall lie against any person or employee of the Info Tech Corporation of Goa Limited for anything which has been done in good faith or intended to be done under this Act.

7. Power to remove doubts and difficulties.— If any doubt or difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Official Gazette, make such provisions consistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Government in such cases shall be final:

Provided that no such order shall be made after the expiration of two years from the commencement of this Act.

Statement of Objects and Reasons

The Info Tech Corporation of Goa Limited (hereinafter referred to as the “said Company”), was set up by the Government of Goa in order to promote the overall growth of the economy of the State of Goa through the use of Information Technology. The said Company is a ‘Government Company’ within the meaning assigned to that term under section 617 of the Companies Act, 1956 (Central Act 1 of 1956), and is incorporated under the provisions of the said Act.

Vide Order bearing No. 23/30/2000/RB/PIS dated 07-04-2001, issued by the Collector, North Goa, in exercise of the powers conferred by section 21 of the Goa Land Revenue Code, 1968 (Act 9 of 1969), the total land under Survey Nos. 264 (part), 266 (part), 267, 268, 269, 270, 271 and 273 (part) of village Taleigao, Tiswadi, Goa, came to be transferred to the Electronic Corporation of Goa Ltd., to set up High (HI) Tech Habitat, with the approval of the Government conveyed vide letter No 16/1/99-RD (6650) dated 20-06-2000.

The name of the said Electronic Corporation of Goa Ltd., was changed to Info Tech Corporation of Goa Limited on 27-04-2001. The name of the said “HI-Tech Habitat” was also changed to “Rajiv Gandhi IT Habitat”, (hereinafter referred to as the “said project”).

By a subsequent Order bearing No. 14/41/2006-RD dated 5-10-2006, issued by the Under Secretary (Revenue), Government of Goa, the Government of Goa was pleased to allot landed

property admeasuring 32,275 square metres, surveyed under Survey No. 238 (part) and landed property admeasuring 52,380 square metres, surveyed under Survey No. 236 (part) to the said Company. The said additional landed property admeasuring totally 84,655 square meters was to be used as an extension to the ‘RAJIV GANDHI IT HABITAT’, for creating supporting facilities, like residential buildings for the persons employed in the IT park, restaurants, banks, malls, etc.

In pursuance thereof, the said Company sub-divided the said land surveyed under Nos. 264 (part), 266 (part), 267, 268, 269, 270, 271 and 273 (part) of village Taleigao, Tiswadi, Goa, into eighteen plots of different sizes, varying from 4,000 square meters to 40,000 square metres, for the setting up of Information Technology Software/Information Technology Enabled Service Industries. The said company also created four sub-divided plots for the use of supporting facilities, as stated above.

Out of the aforesaid eighteen sub-divided plots, sixteen plots came to be allotted in favour of various allottees; and further out of the aforesaid four sub-divided plots, all four plots came to be allotted, at various intervals of time during the years 2006 and 2007.

The infrastructure work at the said project that was being carried on by the said Company had to be stalled in the month of December, 2007 on account of certain violent protests by the locals at the said project site and several financial defaults/violations of the terms and conditions of the Lease Deeds, have been committed by the Allottees in respect of the Lease Deeds entered into by them with the said Company. At present, the entire said project stands paralyzed and has come to a grinding halt. Further, no Allottee has undertaken any activity whatsoever at the said project site for implementation of the IT Project.

It has also been observed that various complaints have been received with regard to the process in which the said allotments have been made. In this connection, Nitoll Jinn

Trust, Margao, Goa, has filed a Writ Petition bearing No. 383 of 2007 in the Hon'ble High Court of Bombay at Goa, wherein the Petitioner has claimed a Writ of Mandamus, directing, quashing and setting aside of the said allotments made by the said Company. The said Writ Petition is still pending admission before the Hon'ble High Court.

In the light of the aforesaid facts and circumstances, the very purpose of establishing the said 'RAJIV GANDHI IT HABITAT' has been defeated. An urgent need had been felt by the State of Goa to put the said Information Technology Software/Information Technology Enabled Service Industries Project back on the track so as to promote the overall growth of the State's economy through the use of information technology and to further generate quality employment to the youth, having requisite educational qualifications, in the said Project which would bring in much needed investment in the field of Information Technology and will sub-serve the larger public interest.

It is also found that there are already several encroachments which have come up at the said project site and if the said land is left in the present state of affairs, then the same will be subject to even more encroachments and will eventually affect the State's revenue and holdings.

It has also been observed that in respect of the eighteen sub-divided plots reserved for the establishment of Information Technology Software/Information Technology Enabled Service Industries, only advertisements were issued inviting applications from eligible parties for lease of the said plots. It has been observed that in response to the said advertisements, fourteen eligible applications were received by the said Company and the said Company purported to allot plots to all fourteen applications. In the said advertisements, the amount of premium was already fixed. It was not a case wherein the reserve price was fixed, bids invited and the plots allotted to the highest bidder. From the

procedure which was adopted for allotment of the said plots, it appears that no established procedure for distribution of public property was adopted and hence the procedure adopted is in total violation of Law. In view of the aforesaid facts and circumstances, the Government has decided to cancel/abolish the allotment of plots as aforesaid and make them non-est in the eyes of law.

It is also pertinent to note that the said Company had also issued final notices for termination of the allotment of the plots to ten allottees. Against the said final notices, six of the aforesaid ten allottees approached the District Court at North Goa, under section 9 of the Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996), *inter alia* seeking reliefs against the Corporation from cancelling or termination of the said Lease Deeds or allotment of plots in their favour. In fact in most of the cases, *ad interim* reliefs had been granted by the District Court directing the said Company not to terminate or cancel the said Lease Deed/Allotment. The said matters have been pending final disposal before the District Court since the year 2010 and the same have not been disposed off till date. It was felt that, in view of the tremendous delay caused in the course of the said litigation, the implementation of the said project would be seriously jeopardized and would not see the light-of-day in the near future; thereby defeating the greater and larger public interest.

In order to achieve the realistic target of having an IT Habitat, the Bill seeks to cancel/abolish allotment of all the said plots, as specified in Schedule to the Bill, at the 'RAJIV GANDHI IT HABITAT' made in favour of the various allottees and to vest the said plots with the said Company, free from charges, encumbrances, etc. It is also proposed that the said allottees be refunded the amounts already paid by them to the said company by way of premium/lease rent, licence fee and security deposit, if any, interest on the installments paid, if any, by them, alongwith simple interest at the rate of ten percent, per annum. The Bill

also seeks to make provision for re-allotment of plots by the said Company, with Government approval, by inviting bids by advertisement in newspapers or by any other known mode of disposal of Government property.

This Bill seeks to achieve the above objectives.

Financial Memorandum

In terms of clause 3 (4) of the Bill, the amount paid by the allottees, namely, the premium/lease rent/licence fees/security deposit, interest on installments already paid to Info Tech Corporation of Goa Limited by the allottees shall be repaid alongwith simple interest calculated at the rate of 10% per annum.

The amount aggregates to approximately Rs. 140.00 crores. The funds required for refund will be taken by way of loan for a period of 10 years by the Info Tech Corporation of Goa Limited.

No Government Grant will be taken at this Stage.

Memorandum Regarding Delegated Legislation

*No delegated Legislation is involved in the present Bill.

Porvorim-Goa, MANOHAR PARRIKAR
Dated: 02-08-2012. Chief Minister

Assembly Hall, N. B. SUBHEDAR
Porvorim-Goa. Secretary to the Legislative
Dated: 02-08-2012. Assembly of Goa.

SCHEDULE

List of Allottees and Allotments of plots

Plot No	Name of the Firm	Plot area in sq.mts.	Category	Remarks
1	2	3	4	5
P1	M/s. Devashri Real Estate	7,267.76	2nd Category	Lease deed executed

1	2	3	4	5
	Developers 710, 7th Floor, Dempo Towers, Patto Plaza, Panaji, Goa			on 07-06-2007
P2	M/s. CNS Infotech Private Limited 707, Vikas Deep Bldg, Dist Center, Laxmi Nagar, Vikas Marg, Delhi	7,547.78	1st Category For BPO – Voice & non-voice	Lease deed executed on 02-05-2007
P3	M/s. Pulkrit Construction Pvt. Ltd. D-22, Defence Colony, New Delhi – 110024	7,308.42	2nd Category	Lease deed executed on 28-01-2008
P4	M/s. Goa Tech Parks Pvt. Ltd. K. K Tower, Parel Tank Road, G D Ambedkar Marg, Parel, Mumbai 400012	40,000.98	2nd Category	Lease deed executed on 27-03-2007
P5	M/s. Milcon Developers Pvt. Ltd. D-25, Ansal Villa Farm, Satbari, Mehrauli, NewDelhi-110030	13,412.76	2nd Category	Lease deed executed on 05-10-2007
P6	M/s. D.S. Contractors Pvt. Ltd. UGF-003, Brindavan Apartments, Near Agriculture Office, Tonca, Caranzalem-Goa	6,953.77	2nd Category	Lease deed executed on 10-12-2007
P7	M/s. Lotus Technobuild Pvt. Ltd. (Emaar MGF Consortium) 109, New Delhi House, 27, Barakhamba Road, New Delhi- 110001	9,127.44	2nd Category	Lease deed executed on 30-04-2007

1	2	3	4	5	1	2	3	4	5
P8	M/s. Lotus Technobuild Pvt. Ltd. 109, New Delhi House, 27, Barakhamba Road, New Delhi-110001	15,655.25	2nd Category	Lease deed executed on 30-04-2007		C.B.M. Compound, Vishakapatnam			
P9	M/s. Pawa Infrastructure Pvt. Ltd. Pawha House, J-66, NDSE, Part I, New Delhi	40,558.73	2nd Category	Lease deed executed on 06-01-2008	P17	M/s. Surana Telecom Ltd. 2nd Floor, Surya Towers, S. P. Road, Secunderabad	4,096.03	1st Category IT Software/ITES	Lease deed executed on 04-04-2007
P10	Vacant Plot	5,684.98	—	—	P18	M/s. Ampersand Digimedia & Entertainment Limited 313, Navneelam Society, R. L. , Thadani Marg, Worli – Mumbai – 22	4,053.27	1st Category IT Software/multimedia	Lease deed not executed
P11	Vacant Plot	5,176.20	—	—	Total		2,03,756.55		
P12	M/s. Financial Technologies (I) Limited FT Tower, CTS No. : 256 & 257, Suren Road, Chakala, Andheri (East), Mumbai – 400093	8,501.83	1st Category For IT Services	Lease deed executed on 01-03-2007	P1	M/s. Technology Innovations	10,592.18	IT Habitat Building	Lease deed is executed
P13	M/s. Financial Technologies (I) Ltd. FT Tower, CTS No. : 256 & 257, Suren Road, Chakala, Andheri (East), Mumbai–400093	5,816.55	1st Category For IT Services	Lease deed executed on 01-03-2007	P2	M/s. JMD Limited	20,637.27	Mall	Lease deed is executed
P14	M/s. Milcon Developers Pvt. Ltd. D-25, Ansal Villa Farm, Satbari, Mehrauli, New Delhi – 110030	5,976.04	2nd Category	Lease deed executed on 05-10-2007 11-12-2007	P3	M/s. Jai Bhuvan Builders Pvt. Ltd.	23,681.98	Residential Apartments	Lease deed is executed
P15	M/s. Steel Plant Pvt. Ltd. Sona Mohar, Behind Municipal, Market, Off. Nehru Road, Vakola, Santacruz, Mumbai	8,509.93	2nd Category	Lease deed executed on 11-12-2007	P4	M/s. C. Mendonsa	10,001.13a	Club House & Service Apartments	Lease deed is executed
P16	M/s. M. Venkata Rao Infra Projects Pvt. Ltd. 1-1-39/BBC, MVR Plaza,	8,108.83	2nd Category	Lease deed executed on 04-07-2007	Governor's Recommendation under Article 207 of the Constitution of India				
					In pursuance to Article 207 of the Constitution of India, I, Bharat Vir Wanchoo, Governor of Goa, hereby recommend the introduction and consideration of The Goa “Rajiv Gandhi IT Habitat-Cancellation/Abolition and Regulation of Allotment of Plots” Bill No. 27 of 2012, by the Legislative Assembly of Goa.				
					RAJ BHAVAN, Date: 02-08-2012.		BHARAT VIR WANCHOO, Governor of Goa.		
					LA/LEGN/2012/1330				
					The following bill which was introduced in the Legislative Assembly of the State of Goa on 6th August, 2012 is hereby published for				

general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Highways (Amendment) Bill, 2012

(Bill No. 24 of 2012)

A

BILL

*further to amend the Goa, Daman and Diu
Highways Act, 1974 (Act No. 10 of 1974).*

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa Highways (Amendment) Act, 2012.

(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. *Amendment of section 54 A.*— In section 54A of the Goa, Daman and Diu Highways Act, 1974 (Act No.10 of 1974) (hereinafter referred to as the 'principal Act'), in sub-section (1), after the existing proviso, the following proviso shall be inserted, namely:—

“Provided further that the Government may by notification and subject to such restrictions and conditions as may be specified in the notification, exempt either totally, or partially any motor vehicle or motor vehicles or any class of motor vehicles, from the payment of fees.

3. *Amendment of section 54B.*— in section 54B of the principal Act, in sub-section (1) after the existing proviso, the following proviso shall be inserted, namely:—

“Provided further that the Government may by notification and subject to such

restrictions and conditions as may be specified in the notification, exempt either totally or partially, any motor vehicle or motor vehicles, or any class of motor vehicles, from the payment of fees”.

4. *Insertion of new section 54C and 54D.*— After section 54 B of the principal Act, the following sections shall be inserted, namely:—

“54C. Entry to bridges, State highways, etc., without paying fee- Whoever enters a bridge or State highway or major district road or village road without paying the fee shall, on conviction, be punished.—

- (a) for the first offence with a fine which may extend to one thousand rupees.
- (b) for a subsequent offense with a fine which may extend to five thousand rupees.

54D. Power of the Government to enter into agreement for development and maintenance of Highways and bridges – (1) Notwithstanding anything contained in this Act or any other Act for the time being in force, the Government may enter into an agreement with any person in relation to the construction, development and maintenance of the whole or any part of the Highway or a bridge.

(2) To facilitate or secure such construction, development and maintenance, the agreement may, subject to such terms and conditions as may be prescribed, provide for the transfer of any land belonging to or to be acquired by the Government under this Act or any other Act, for the time being in force, to such person or persons by way of lease or otherwise during the period of such agreement.

(3) Notwithstanding anything contained in sections 54A and 54B and rules framed thereunder the person referred to in sub-section (1) shall be entitled to collect and retain fee at such rate of rates, for the service

or benefits rendered by him as the Government may by notification in the Official Gazette specify having regard to the expenditure involved for acquisition of land and construction, development and maintenance of bridges or highway.

(4) A person referred to in sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) on the highway or a bridge forming subject matter of such agreement, for proper management thereof".

Statement of Objects and Reasons

The Bill seeks to amend section 54A and 54B of the Goa, Daman and Diu Highways Act, 1974 (Act 10 of 1974) (hereinafter referred to as the "said Act") so as to enable the Government to exempt under the said Act, any Motor Vehicle or Motor Vehicles or any class of Motor Vehicles from the payment of fees to be levied under the said Act.

The Bill further seeks to insert new section 54C so as to provide for punishment or entering any bridges or such highways or roads without payment of the said fees.

The Bill also seeks to insert new section 54D in the said Act so as to enable the Government to enter in to an agreement for development and maintenance of highways/bridges/roads.

This Bill seeks to achieve above objects.

Financial Memorandum

No Financial implications are involved in this Bill.

Memorandum Regarding Delegated Legislations

Clause 1(2) of the Bill empowers the Government to issue notification for appointing a date to bring into force the Act.

Clause 2 and 3 of the Bill empowers the Government to issue notification exempting

Motor Vehicle or class of Motor Vehicles from payment of fees leviable under said Act.

Clause 4 of the Bill empowers the Government to lay down by way of rules the terms and conditions subject to which the agreement may be entered into by Government with any persons. Further, it also empowers the Government to issue notification specifying the rate of which fees may be collected and retained by the persons with whom the agreement is entered into.

These delegations are of normal character.

Porvorim-Goa,
Dated: 02-08-2012.

R. M. DHAVALIKAR
Hon. PWD Minister

Assembly Hall,
Porvorim-Goa,
Dated: 02-08-2012

NILKHANT B. SUBHEDAR
Secretary to the Legislative
Assembly of Goa

ANNEXURE

Extracts of Section 54A & 54B of the Goa, Daman and Diu Highways Act, 1974

¹ "[54A. Power of Government to levy fees for services or benefits rendered on highways etc.— (1) The Government may, by notification in the Official Gazette, levy fees amendment at such rates as may be laid down by rules made in this behalf for services or benefits rendered in relation to the use of permanent bridges costing more than rupees twenty five lakhs constructed on State Highway, major district roads and village roads, which are thrown open for the public on or before the first day of January, 1986:

Provided that if the Government is of the opinion that it is necessary in the public interest so to do, it may, by like notification, specify any bridge in relation to the use of which fees shall not be leviable under this section.

(2) Such fees when so levied shall be collected in accordance with the rules made under this Act.]"

² "[54B. Power of Government to levy fees for use of roads, etc.— (1) The Government may, by notification in the Official Gazette, levy fees amendment at such rates as may be laid down by

rules made in this behalf for use of State Highway, major district roads and village roads, or any portion thereof, which are thrown open for the public on or after the first day of January, 1988:

Provided that if the Government is of the opinion that it is necessary in the public interest so to do, it may, by like notification, specify any State Highways, major district roads and village roads, or any portion thereof, in relation to the use of which fees shall not be leviable under this section.

(2) Such fees, when so levied, shall be collected in accordance with the rules made under this Act.]”

¹ Inserted by the GDD Highway (Amendment) Act, 1987 (Act No. 9 of 1987).

² Inserted by the GDD Highway (Amendment) Act, 1988 (Act No. 8 of 1987).

LA/LEGN/2012/1331

The following bill which was introduced in the Legislative Assembly of the State of Goa on 6th August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Public Gambling (Amendment) Bill, 2012

(BILL No. 21 of 2012)

A

BILL

further to amend the Goa Public Gambling Act, 1976 (Act No. 14 of 1976).

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa Public Gambling (Amendment) Act, 2012.

(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. *Amendment of section 2.*— In section 2 of the Goa Public Gambling Act, 1976 (Act No. 14 of 1976) (hereinafter referred to as the “principal Act”),—

(i) after clause (1), the following clause shall be inserted, namely:—

“(1A) “Five Star Hotel” means a Five Star Hotel categorized and certified as such by the Government of India”

(ii) after clause (2), the following clause shall be inserted, namely:—

(2A) “Gaming Commissioner” means Gaming Commissioner appointed under section 13C;

(iii) after clause (5), the following clauses shall be inserted, namely:—

(6) “prescribed” means prescribed by rules made under this Act;

(7) “tourist” means a person or a group of persons, who have attained the age of 21 years, including pilgrims who are on a visit to the State of Goa, and not domiciled or permanently residing in the State of Goa, holding a valid tourist permit issued under this Act;

(8) “Tourist permit” means Tourist Permit issued to tourist by Gaming Commissioner, authorizing him to enter the place or area designated under section 13B where the game/ /games as authorized under section 13A are actually conducted;

(9) “Vessel” means and includes any ship, boat, duly registered with the Captain of Ports, Goa, under the Inland Vessels Act, 1917 (Act 1 of 1917), or registered with the Director General of Shipping.”.

3. *Amendment of section 5.*— In clause (a) of sub-section (1) of section 5 of the principal

Act, the words "Gaming Commissioner or" shall be inserted at the end.

4. *Insertion of new sections.*— After section 13A of the principal Act, the following sections shall be inserted, namely:—

"13B. *Places or areas for gaming.*— (1) Except the places or areas as may be designated by the Government, by a notification issued in this regard in the Official Gazette, for conducting game/games as authorized under sub-section (1) of section 13A, no game/games shall be conducted at any other place or area in the State of Goa or on board in vessel within the territorial waters of the State of Goa.

(2) The Government may, in the notification issued under sub-section (1), specify the total number of vessels which may operate in such designated areas.

13C. *Appointment of Gaming Commissioner.*— The Government may, by notification in the Official Gazette, appoint an officer or an authority to be Gaming Commissioner.

13D. *Powers, duties and functions of the Gaming Commissioner.*— The powers, duties and functions of the Gaming Commissioner shall be,—

(a) to keep a check and exercise overall control over the games conducted in the designated places or areas;

(b) to maintain the register, records, documents in connection with the games conducted in the designated places or areas;

(c) subject to such rules as may be framed by the Government in this behalf, to regulate the gaming authorized under sub-section (1) of section 13A;

(d) to order closure, to seal any place in a Five Star Hotel or to take custody of any vessel, and while exercising this power, the Commissioner shall make an inventory of all the items/things of which the custody is taken of;

(e) to issue tourist permit to a tourist desirous of entering the place or area where the game/games as authorized under section 13A are actually conducted;

(f) to issue permissions in such form as may be prescribed, to any person, agency, hotel holding valid registration under the Goa, Daman and Diu Registration of Tourist Trade Act, 1982 (Act No. 10 of 1982), for issuing tourist permits; and

(g) to exercise such other powers, perform such other duties and discharge such other functions, as laid down in this Act or as may be prescribed.

13E. *Transfer of licence.*— (1) Except as provided in sub-section (2), no person shall transfer a licence obtained under provisions of this Act to conduct game/games, to any other person.

(2) Subject to such conditions and restrictions as may be laid down in this behalf, the Government may, upon a request of the licensee to that effect, by order, transfer a licence in the name of any other person, on payment of such fees as may be prescribed.

13F. *Powers of the Government.*— (1) The Government may, by notification in the Official Gazette, specify the rates of fee that may be levied for conducting game/games authorized under sub-section (1) of section 13A.

(2) Such fee when levied shall be collected in accordance with the rules made under this Act.

(3) The Government may, subject to such conditions and restrictions as may be laid down in this behalf, regulate entry of the persons in a place or area as designated under sub-section (1) of section 13B.

(4) The Government may give such directions to the Gaming Commissioner, as it deems fit.

13G. *Entry to place or area designated under section 13B.*— (1) No person other than a tourist shall have entry to the place or area

where the game/games as authorized under section 13A are actually conducted:

Provided that bonafide staff of a Five Star Hotel or a Vessel, who are engaged in operation and service to guests, shall not be prevented entry:

Provided further that a Government officer, while discharging an official duty, shall also not be prevented entry.

(2) Whoever without a valid tourist permit enters any place or area as referred to in sub-section (1), shall be liable to pay fine which is ten times of the amount of fee payable for the tourist permit.”.

13H. *Punishment.*— Whoever contravenes the provisions of section 13B and/or 13E shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine not less than rupees ten lakhs which may extend to rupees twenty lakhs, or with both.

13I. *Composition of certain offences.*— (1) Any offence punishable under sections 13G and 13H may before the institution of the prosecution, be compounded by the Gaming Commissioner, on payment to the Gaming Commissioner, for the credit to the Government, such sum as may be specified by the Gaming Commissioner, by an order issued in this behalf, not exceeding the maximum amount of fine which may be imposed for that offence:

Provided that the authorization granted under section 13A shall remain suspended till the payment of composition fee is made by the offender.

(2) Where an offence has been compounded under sub-section (1) no proceeding shall be taken against the offender in respect of the offence so compounded and such composition shall not be subject to any appeal.

13J. *Attachment/Confiscation.*— (1) The premises or the vessel wherein the

contravention as mentioned in section 13B and/or 13E has taken place shall be liable for attachment/confiscation, as the case may be.

(2) When anything is confiscated under sub-section (1), it shall thereupon vest in the Government.

13K. *Appeal.*— (1) An appeal shall lie to the Government against any order passed by the Gaming Commissioner.

(2) All appeals pending before the Goa Administrative Tribunal constituted under the Goa Administrative Tribunal Act, 1965 (Act No. 6 of 1965) as on the date of commencement of the Goa Public Gambling (Amendment) Act, 2012, shall stand transferred to the Government.

13L. *Jurisdiction of Civil Court barred.*— No Civil Court shall entertain try, dispose of any matter arising out of any order, direction, rules, issued/framed under this Act.

5. *Insertion of new section 17A.*— After section 17 of the principal Act, the following section shall be inserted, namely:—

“17A. *Power to make rules.*— (1) The Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), the Government may make rules,—

(a) under section 13D(c), to regulate the gaming authorized under sub-section (1) of section 13A;

(b) under section 13D(f), the form of permission;

(c) under section 13D(g), other powers, duties and functions of the Gaming commissioner;

(d) under section 13E(2), the fees to be paid for transfer of license;

(e) under section 13F(2), the manner of collection of fees;

(f) any other matter which is required to be or may be prescribed.

(3) All rules made under this Act shall be published in the Official Gazette and shall, as soon as may be after they are made, be laid before the Legislative Assembly of Goa while it is in session for a total period of not less than fourteen days, which may be comprised in one session or two or more successive sessions, and shall, unless some later date is appointed, take effect from the date of their publication in the Official Gazette subject to such modification or annulment as the Legislative Assembly of Goa may, during the said period, agree to make, so however, that any such modification or annulment, shall be without prejudice to the validity of anything previously done thereunder.”.

Statement of Objects and Reasons

The Bill seeks to empower the State Government to notify designated gaming area; to permit only tourist to casinos and restrict entry of youth under the age of 21 years in the gaming area; to incorporate penal provisions for prosecution and fine; provision for compounding of offence; power to frame rules to regulate and control the activity; power to seal and confiscate; provision about appeals under the Act; authorizing Government to prescribe tourist permit fees; and to amend other relevant and incidental provisions.

This Bill seeks to achieve the above objects.

Financial Memorandum

The Bill seeks to create Statutory Authority of Gaming Commissioner to regulate, administer and enforce the Goa Public Gambling Act, 1976 and hence the payment of salaries and other office administration expenses may arise in future. However, at present, there is no such proposal for creation of this post and hence there is no financial implications involved in the Bill.

Memorandum Regarding Delegated Legislation

Section 2(A) empowers the State Government to appoint Gaming Commissioner under section 13 C.

Section 13B (1) empowers the State Government to notify the designated places or areas for conducting games authorized under section 13 A.

Section 13B (2) empowers the State Government to notify the total number of Vessels which may operate in designated area.

Section 13C empowers the State Government to appoint a officer or an Authority as Gaming Commissioner by notification.

Section 13D empowers the State Government to provide powers, duties and functions of the Gaming Commissioner.

Section 13E empowers the State Government to transfer the license to any vessel or Five Star Hotel on payment of prescribed fees.

Section 13F empowers the State Government to have all the powers to fix, levy, and recover any fees by notification that may be levied for conducting games authorized under section 13A.

Section 13G empowers the State Government to restrict entry in designated gaming areas under section 13 B only to Tourist and bonafide staff of the Five Star Hotel or vessel engaged in service and Government Officer discharging official duty.

Section 13H empowers the State Government to levy fines, prosecute for contravention of provisions of Section 13B and or 13E.

Section 13I empowers the Gaming Commissioner to compound the offence punishable under sections 13G and 13H in lieu of prosecution by recovering composition fees and to suspend the license till such payment.

Section 13J empowers the State Government to confiscate vessel/attachment of premises.

Section 17A empowers the State Government to make rules to carry out the purposes of this Act under sub-section (1) of section 17A, under section 13D (c), to regulate the gaming authorized under sub-section (1) of section 13A, under sections 13D(f), 13D(g), 13E(2), 13F(2) and any other matter which is required to be or may be prescribed.

These delegations are of normal character.

Porvorim-Goa,
2nd August, 2012.

MANOHAR PARRIKAR
Minister for Home

Assembly Hall,
Porvorim-Goa.
2nd August, 2012.

N.B. SUBHEDAR
Secretary to the Legislative
Assembly of Goa

ANNEXURE

Bill No. 21 of 2012

Extract of the Goa Public Gambling Act, 1976 (Act No. 14 of 1976)

5. *Power to enter and authorise police to enter and search.*— (1) (a) If a District Magistrate, or a Sub-divisional Magistrate, at a Judicial Magistrate of the First Class, or

(b) The Inspector General or a Superintendent of Police or a Deputy Superintendent of Police or an Assistant Superintendent of Police specially empowered by the Government in this behalf,

upon credible information, and after such enquiry as he may think necessary, has reason to believe that any house, room or place is used as a common gaming-house, he may—

(i) either himself enter, or by his warrant, authorise any police officer not below the rank of ¹[a Head Constable of Police] to enter, by force, if necessary, with such assistance as may be found necessary, by night or by day, any such house, room or place,

(ii) either himself take into custody, or authorise such officer to take into custody, all

persons whom he or such officer finds therein whether or not then actually gaming

(iii) seize or authorise such officer to seize all instruments of gaming, and all money and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein,

(iv) search or authorise such officer to search all parts of the house, room or place which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody, and

(v) seize or authorise such officer to seize and take possession of all instruments of gaming found upon such search.

(2) Notwithstanding anything contained in any other law for the time being in force, no search made under this section shall be deemed to be illegal by reason only of the fact that the witnesses (if any) of the search were not inhabitants of the locality in which the house, room or place searched is situated.

¹[13(A) *Authorised Game.*— (1) Notwithstanding anything contained in this Act, the Government may authorise any game of electronic amusement/slot machines in Five Star Hotels ¹[and such table games and gaming on board in vessels offshore as may be notified], subject to such conditions including payment of such recurring and non-recurring fees as may be prescribed.

(2) The provisions of this Act shall not apply to any game authorised under sub-section (1)".

17. *Recovery of fines.*— All fines imposed under this Act may be recovered in the manner specified by section 421 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

LA/LEGN/2012/1332

The following bill which was introduced in the Legislative Assembly of the State of Goa on 6th August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Nursing Council Bill, 2012

(Bill No. 28 of 2012)

A

BILL

to provide for the registration of nursing personnel (nurses, auxiliary nurse-midwives, multi-purpose health workers and health visitors), to regulate nursing education and for that purpose constitute Goa Nursing Council in the State of Goa and matters connected therewith or incidental thereto.

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—

(1) This Act may be called the Goa Nursing Council Act, 2012.

(2) It shall extend to the whole of the State of Goa.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. *Definitions.*— In this Act, unless the context otherwise requires,—

(a) “affiliated institution” means an institution stated in section 34;

(b) “appointed date” means the date on which this Act shall come into force;

(c) “auxiliary nurse-midwife” means a person who possesses a certificate of auxiliary nurse-midwife, recognized by the Indian Nursing Council for practicing auxiliary nursing and auxiliary midwifery in public and private sectors and registered under section 17;

(d) “board” means examination board of the Council constituted under section 12 of this Act;

(e) “Council” means the Goa Nursing Council constituted under section 3;

(f) “Government” means the Government of Goa;

(g) “health visitor” means a person who has obtained the Health Visitor's Certificate from any Institution recognized in this behalf by the Council;

(h) “licensing authority” means an officer authorized by the Government to issue licenses under section 30 of this Act;

(i) “List” means a list of persons prepared under section 23;

(j) “member” means a member of the Council;

(k) “nurse” means a person who possesses requisite qualification in nursing, either Bachelor's degree in nursing or course in nursing having at least six months duration from recognized University/Institution;

(l) “nursing establishment” means any establishment, whether carried on for gain or not, which provides or is intended to provide the services of persons to act as nurses to those requiring such services;

(m) “nursing personnel” means nursing personnel, namely, nurses, auxiliary nurse-midwives, multi-purpose health workers and health visitors;

(n) “prescribed” means prescribed by rules made under this Act;

(o) “President” means the President of the Council;

(p) "register" means the register of nursing personnel prepared under this Act;

(q) "registered" means registered in accordance with the provisions of section 17;

(r) "Registrar" means the Registrar appointed under section 15;

(s) "regulations" means regulations made by the Council under this Act;

(t) "rules" means rules made under section 42;

(u) "section" means section of this Act;

(v) "State" means the State of Goa;

(w) "Vice President" means the Vice-President of the Council.

CHAPTER II

Constitution, Functions and Powers of the Council

3. *Constitution and incorporation of the Council.*— (1) The Government may, by notification in the Official Gazette, constitute a Council to be called the Goa Nursing Council;

(2) The Council shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract and may by the name aforesaid sue and be sued.

(3) The Council shall consist of the following members, namely:—

(a) Ex-officio Members:

(i) the Director of Health Services;

(ii) the Dean, Goa Medical College;

(b) Nominated Members:

(i) four head nurses (by whatever name called) having minimum qualifications of Bachelor's Degree in

nursing, from hospitals in the State, to represent each hospital, namely, the Goa Medical College and Hospital, Institute of Psychiatry and Human Behaviour, Mormugao Port Trust Hospital, Government District Hospitals of North and South Goa and Employees State Insurance Hospital, to be nominated by the Government by rotation;

(ii) three members to be nominated by the Government out of whom one shall be a Public Health Nurse and one each shall be from amongst auxiliary nurse-midwives and teachers of recognized nursing schools/colleges in the State.

(c) Elected Members:

(i) one member, to be elected from amongst the principals of colleges conferring degree in nursing, by themselves;

(ii) one member, to be elected from amongst the faculty conferring degree in nursing by themselves;

(iii) one member to be elected from amongst the faculty conferring diploma in auxiliary nursing midwifery by themselves;

(iv) one member to be elected by members of the Trained Nurses Association of India (Goa Branch), from amongst themselves;

(v) one member, to be elected by the nurses whose names are entered in the register, from amongst themselves.

(4) The President and the Vice-President of the Council shall be elected by the members from amongst themselves.

(5) The election of the members and of the President and the Vice-President shall be held at such time, and at such place and in such manner, as may be prescribed.

(6) If at any election, the electors fail to elect the requisite number of members

or the President, or the Vice-President, the Government shall nominate such person or persons who are qualified to be elected, as it deems fit, to fill up the vacancy or vacancies; and the person or persons so nominated shall be deemed to have been duly elected under this section.

(7) Where any dispute arises regarding any election of a member or the President or Vice-President, it shall be referred to the Government and the decision of the Government shall be final.

(8) The Government shall, by notification in the Official Gazette, publish the names of both elected and nominated members.

4. *Term of office.*— (1) Save as otherwise provided in this Act, a member whether elected or nominated, shall hold office for a period of three years from the date of publication of the notification under sub-section (8) of section 3, for a maximum of two terms.

(2) Save as otherwise provided in this Act, the President and the Vice-President shall hold office from the date of their election upto the date on which their term of office as a member expires.

(3) The term of office of an outgoing member shall, notwithstanding anything contained in sub-section (1), be deemed to extend to and expire on the day immediately preceding the day on which the names of the successor members are published under sub-section (8) of section 3.

(4) An outgoing member, the President and the Vice-President, shall be eligible for re-election or re-nomination, subject however to the maximum term as specified in sub-section (1).

5. *Casual Vacancies.*— (1) Any casual vacancy in the office of the President or the Vice-President or of a member elected under clause (c) of sub-section (3) of section 3, caused by reason of death, resignation,

disqualification or disability or any other reason, shall be filled by election:

Provided that, any such vacancy in the office of such elected member occurring within six months prior to the date on which the term of office of all the members expires, shall not be filled.

(2) Any casual vacancy, previous to the expiry of the term, in the office of the member nominated under clause (b) of sub-section (3) of section 3, shall be reported forthwith by the Registrar to the Government, and shall, as soon as possible thereafter, be filled by the Government by nomination.

(3) Any person elected under sub-section (1) or nominated under sub-section (2) to fill up a casual vacancy shall, notwithstanding anything contained in section 4, hold office only so long as the person in whose place he is elected or nominated would have held office, if the vacancy had not occurred.

6. *Resignation.*— (1) The President or the Vice-President may at any time resign his office by a notice in writing addressed to the Council and delivered to the Registrar. The resignation shall take effect from the date on which it is accepted by the Council.

(2) An elected member may at any time resign his office by a notice in writing addressed to the President. A nominated member may at any time resign his office by a notice in writing addressed to the Government. Every such resignation shall take effect from the date on which it is accepted by the President or the Government, as the case may be.

7. *Disqualification.*— (1) A person shall be disqualified for being elected or nominated as, and for continuing as, a member,—

(a) if he is an undischarged insolvent;

(b) if he is of unsound mind, and stands so declared by a competent court;

(c) if his name has been removed from the register and has not been re-entered therein;

(d) if he is a whole-time officer or servant of the Council;

(e) if he has completed sixty-five years of age; or

(f) if he is convicted of an offence involving moral turpitude within a period of five years immediately before he's being elected or nominated as a member.

(2) If any member absents himself from three consecutive meetings of the Council, without leave of the Council or without such reasons as may, in the opinion of the Council, be sufficient, the Council may declare his seat vacant, and take steps to fill up the vacancy.

(3) If any member becomes disqualified or is found to be subject to any of the disqualifications mentioned in sub-section (1), the Council shall submit a report to the Government, and the Government, if satisfied about the disqualification, shall declare his seat vacant.

(4) Notwithstanding anything contained in this Act, the Government may remove a member from office, if the Council decides at a meeting by two-third majority of its total membership that the continuation of a member in office is prejudicial to the interest of the Council.

8. *Meetings of the Council.*— (1) The meetings of the Council shall be convened, held and conducted in such manner as may be prescribed.

(2) The President, when present, shall preside over every meeting of the Council. If at any meeting the President is absent, the Vice-President, and in the absence of both, some other member elected by the members present, from amongst themselves, shall preside over such meeting.

(3) All questions at a meeting of the Council shall be decided by a majority of votes.

(4) In case of equality of votes, the presiding authority at a meeting shall have and exercise a second or a casting vote.

(5) Five members (including the President and the Vice-President) shall form a quorum. When a quorum is required but not present, the presiding authority shall adjourn the meeting to such hour on some future day, as it may notify on the notice board at the office of the Council; and the business which would have been brought before the original meeting had there been a quorum thereat, shall be brought before the adjourned meeting, and may be disposed of at such meeting or any subsequent adjournment thereof, whether there be a quorum present or not.

9. *Proceedings of meetings and validity of acts.*— (1) No disqualification of or defect in the election or nomination of any person as a member, or as the President, or as the Vice-President or as a Presiding Authority of a meeting, shall of itself be deemed to vitiate any act or any proceedings of the Council in which such person has taken part, whenever the majority of persons who are parties to such act or proceedings, were entitled to vote.

(2) During any vacancy in the Council, the continuing members may act, as if no vacancy has occurred:

Provided that, the number of vacancies shall, at any time, not exceed four.

10. *Powers, duties and functions of the Council.*— Subject to the provisions contained in this Act, the powers, duties and functions of the Council shall be,—

(a) to maintain the register and the List, and to provide for the registration and enlistment of nursing personnel;

(b) to hear and decide appeal from any decision of the Registrar;

(c) to prescribe a code of ethics for regulating the professional conduct of nursing personnel;

(d) to reprimand a registered or an enlisted nursing personnel or to suspend or remove his name from the register and the List, or to take such other disciplinary action against him as may, in the opinion of the Council, be necessary or expedient;

(e) to hold examinations and to make all necessary arrangements for such examinations;

(f) to prescribe the courses or training leading to the examinations held by the Council, and to charge fees for such examinations;

(g) to prepare, publish and prescribe text-books and to publish statements of prescribed courses of study;

(h) to grant certificates and diplomas and marks of honour;

(i) to award stipends, scholarships, certificates of merit, medals, prizes and other rewards;

(j) to recognize institutions for the purpose of training and giving instructions for the courses leading to the examinations held by the Council, or to cancel such recognition;

(k) to inspect nursing establishments and to regulate the functioning of such establishments;

(l) to provide for the inspection of recognized and affiliated institutions, and to require such institutions to furnish such information as may be necessary;

(m) subject to the approval of the Government, to receive donations and to determine the conditions of acceptance of donations; and

(n) to exercise such other powers and perform such other duties and functions as are laid down in this Act, or as may be prescribed.

11. *Executive Committee and other Committees.*— (1) The Council shall, as soon as may be, constitute an Executive Committee consisting of the President ex-officio, and such number of other members elected by the Council from amongst its members, as may be prescribed.

(2) The term of office of, and the manner of filling casual vacancies among, and the procedure to be followed by, the members of

the Executive Committee, shall be such as may be prescribed.

(3) In addition to the powers, duties and functions conferred, imposed and entrusted by this Act, the Executive Committee shall exercise such powers, perform such duties and discharge such functions of the Council as may be entrusted to it, from time to time, by the Council.

(4) The Council may, subject to any rules made in this behalf, from time to time, by resolution passed at a meeting, appoint any other Committee or Committees of its members, consisting of such number of persons, on such terms and for performing such functions, as may be specified in the resolution.

12. *Examination Board.*— (1) The Council shall constitute an Examination Board consisting of a Chairman and six members, out of whom three shall be members of the Council and other three shall be nominated by the Council from amongst prominent academicians. The Chairman of the Examination Board shall be a person with such qualification as may be prescribed:

Provided that, an elected member of the Council shall continue to hold office of a member of the Examination Board only so long as he is a member of the Council.

(2) The term of office of, and the manner of filling casual vacancies among, and the procedure to be followed by, the members of the Examination Board shall be such as may be prescribed.

(3) It shall be the duty of the Examination Board to appoint examiners, to conduct examinations held by the Council and to make recommendations to the Council in respect of the courses of studies, and to perform such other duties and functions in connection with the said examinations as may be prescribed.

13. *Fees and allowances for meetings.*— The President, the Vice-President and other members of the Council and members of the

Executive Committee and other Committees, if any, appointed by the Council, and the Chairman and members of the Examination Board shall be paid, such fees and allowances for attendance at meetings, and such travelling allowance, as shall, from time to time, be prescribed.

14. *Income and Expenditure of the Council.*— (1) The income of the Council shall consist of—

(a) fees received under this Act or the rules or regulations;

(b) grants received from the Government, if any; and

(c) any other sums received by the Council.

(2) It shall be competent for the Council to incur expenditure for the following purposes, namely:—

(a) salaries and allowances of the Registrar and the staff of the Council.

(b) fees and allowances to be paid to the persons mentioned in section 13;

(c) remuneration to be paid to the examiners and other persons appointed by the Council for the conduct of the examinations;

(d) such other expenses as are necessary for performing its duties and discharging its functions under this Act, or the rules or regulations.

15. *Registrar of Council and his duties and functions.*— (1) The Council shall, with the previous sanction of the Government, appoint a full time Registrar and if there need be, due to workload, a Deputy Registrar.

(2) The Executive Committee may, from time to time, grant leave to the Registrar:

Provided that, if the period of leave does not exceed one month, the leave may be granted by President.

(3) The Registrar may, from time to time, grant leave to the Deputy Registrar.

(4) Deputy Registrar shall act as a Registrar during his absence. If the Deputy Registrar is not appointed then during any temporary vacancy in the office of the Registrar due to leave or any other reason, the Executive Committee may, with the previous sanction of the Government, appoint another person to act in his place and any person so appointed shall, for the period of such appointment, be deemed to be the Registrar for the purpose of this Act:

Provided that, when the period of such vacancy does not exceed one month, the appointment may be made by the President, who shall forthwith report about such appointment to the Executive Committee, and the Government.

(5) The Council may, with the previous sanction of the Government, suspend, dismiss or remove any person appointed as the Registrar or Deputy Registrar or impose any other penalty upon them.

(6) Save as otherwise provided in this Act, the qualifications, salary and allowances and other conditions of service of the Registrar and Deputy Registrar shall be such as may be prescribed.

(7) The Registrar shall be the Secretary and the Executive Officer of the Council. He shall attend all meetings of the Council, and of the Executive Committee and of the Examination Board, and shall keep minutes of the names of the members present and of the proceedings of such meetings.

(8) The accounts of the Council shall be kept by the Registrar in the prescribed manner.

(9) The Registrar shall have such supervisory powers over the staff as may be prescribed, and may perform such other duties and discharge such other functions as may be specified in this Act, or as may be prescribed.

(10) The Registrar appointed under this section shall be deemed to be a public servant

within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

16. *Other employees of Council.*— (1) The Council may appoint such officers and servants, other than the Registrar, as it may deem necessary for performing its duties and discharging its function under this Act:

Provided that the number and designations of such officers and servants and their qualifications, salaries and allowances and conditions of service shall be determined by the Council, with the previous sanction of the Government, by regulations made in this behalf.

(2) Notwithstanding anything contained in sub-section (1), but subject to such financial limit as may be laid down in this behalf by the Council, it shall be competent for the Executive Committee to create temporary posts of clerks or servants and to make appointments thereto, to meet any temporary increase in work, or to carry out any work of a seasonal character.

CHAPTER III

Registration and Enlistment

17. *Preparation of Register.*— (1) As soon as may be after the appointed day, the Registrar shall prepare and maintain thereafter a Register of nursing personnel for the State in accordance with the provisions of this Act.

(2) The Register shall be in such form and may be divided into such parts as may be prescribed. It shall include the full name, address and qualifications of the nursing personnel, the date on which each qualification was granted, and such other particulars as may be prescribed.

(3) Any person who holds any of the recognised qualifications included in the Schedule to the Indian Nursing Council Act, 1947 (XLVIII of 1947) shall, subject to any conditions laid down by or under the said Act, at any time, on an application made in

the prescribed form to the Registrar and on payment of the prescribed fee and on presentation of his degree, diploma or certificate, be entitled to have his name entered in the register:

Provided that, the name of an applicant who is unable to present his degree, diploma or certificate may be entered in the Register, if he satisfies the President that he holds such degree, diploma or certificate but for sufficient cause cannot present the same with his application.

(4) Every registered nursing personnel shall be given a certificate of registration in the prescribed form. Such certificate shall be valid upto the date specified therein.

18. *Renewal of Registration.*— (1) Every registered nursing personnel within three months prior to the expiry of his registration shall apply to the Registrar and pay to the Council a renewal fee of such amount as may be prescribed for the continuance of his name on the register.

(2) (a) If the renewal fee is paid on or before the due date, the Registrar shall issue to the registered nursing personnel a renewal slip in the prescribed form specifying the date upto which the validity of the certificate of registration has been extended.

(b) If the renewal fee is not paid by the due date, the Registrar shall remove the name of the defaulting person from the register. On such removal, the certificate of registration issued to the nursing personnel shall be deemed to have been cancelled:

Provided that, the name so removed may be re-entered in the Register on payment of the outstanding renewal fee, and such penal fee as may be prescribed in this behalf. On receipt of such fees, the Registrar shall issue a renewal slip as provided in clause (a).

19. *Maintenance of Register.*— (1) It shall be the duty of the Registrar to make entries in the register, from time to time, to revise

the same and to issue certificates of registration in accordance with the provisions of this Act, and the rules made thereunder, and the Orders of the Council.

(2) The names of registered nursing personnel who die or whose names are directed to be removed from the Register under section 24 shall be removed therefrom.

(3) Any person whose name is entered in the Register and who subsequent to his registration desires to record in the Register any change in his name, shall, on an application made in this behalf and on payment of prescribed fee, be entitled to have such change in his name recorded in the Register.

(4) Subject to the provisions of section 11 of the Indian Nursing Council Act, 1947 (XLVIII of 1947), any person whose name is entered in the Register and who subsequent to his registration obtains any recognized higher qualification, shall, on an application made in this behalf with documentary proof and on payment of the prescribed fee, be entitled to have an entry, stating such qualification, made against his name in the Register.

(5) Where it is shown to the satisfaction of the Registrar that a certificate of registration has been defaced, lost or destroyed, the Registrar may, on payment of the prescribed fee, issue a duplicate certificate.

20. Special procedure for registration in certain cases.— (1) No person who possesses a certificate of Nurse, Auxiliary Nurse Midwife, Multipurpose Health Worker, Health Visitor, Health Supervisor, etc., granted by any authority in any place outside the territory of India (other than the qualification specified in the Schedule of the Indian Nursing Council Act, 1947 (XLVIII of 1947)) shall be registered under this Act, unless the procedure specified in sub-section (2) has been followed.

(2) Any person, who holds any such qualification, may apply to the Council by giving a correct description of his qualification

with the dates on which they were granted and by presentation of his degree or diploma or certificate and evidence of having the requisite knowledge and skill for efficient practice as a nursing personnel. If the Council is satisfied that the degree or diploma or certificate held by the applicant is such as to secure the possession by the applicant of the requisite knowledge and skill for efficient practice as a nursing personnel, the Council may, with the previous approval of the Indian Nursing Council and on payment of a prescribed fee, enter his name in the register.

21. Persons who may not be registered.— Notwithstanding anything contained in section 17 and 20, no person, whose name has been removed from any register kept under this Act or any other law for the time being in force in India regulating the registration of nursing personnel on the ground of professional misconduct, shall be entitled to have his name entered in the register, unless his name is duly ordered to be restored in the register from which it was so removed.

22. Fees for and Certificate of Provisional Registration.— (1) Any person not being a citizen of India who is employed as a nurse, midwife, auxiliary nurse-midwife, teacher or administrator in any hospital or institution situated in the State for purposes of teaching, research or charitable work desires to be enrolled temporarily in the register shall make an application in the prescribed form to the Registrar and shall pay fee as may be prescribed. On receipt of such application, the Registrar shall seek the approval of the President of the Council constituted under the Indian Nursing Council Act, 1947 (XLVIII of 1947) for temporary enrolment of the applicant in the register, and enroll his name in the register of temporary enrolment for such period as may be specified in this behalf in the order issued by the said President.

(2) Every person whose name is entered in the register of temporary enrolment under sub-section (1) shall be given a certificate of

temporary registration in the prescribed form. Such certificate shall remain in force for such period as may be specified therein.

(3) Any person who possesses temporary registration under sub-section (1) shall not be eligible to contest, or to vote at, any election held under this Act.

23. *Preparation of List.*— (1) As soon as may be, after the appointed day, the Registrar shall, in accordance with the provisions of this Act, prepare and maintain thereafter a list of persons practicing as nursing personnel, but not entitled to have their names entered in the register under section 17.

(2) No person other than the person registered under this Act or a person whose name is entered in the list under sub-section (1), shall practice as a nursing personnel:

Provided that any person whose name has been removed from the register maintained under this Act or under any other law for the time being in force in any part of India, or from the register of any other country on the ground of any professional or other misconduct, shall not be entitled to have his name entered in the list.

(3) The provisions of sub-section (2) of section 17 and of sections 18 and 25 shall, *mutatis mutandis*, apply to the list prepared under this section.

24. *Removal of names from the Register and the list.*— (1) If a person whose name is entered in the register or list, after due enquiry held by the Council or by the Executive Committee in the prescribed manner, is found guilty of any misconduct, the Council may,—

(a) issue a letter of warning to such nursing personnel; or

(b) direct the name of such nursing personnel,—

(i) to be removed from the register or the list for such period as may be specified in the direction; or

(ii) to be removed from the register or the list permanently.

Explanation.— For the purposes of this section, “misconduct” shall mean,—

(a) the conviction of a registered nursing personnel by a criminal court for an offence which involves moral turpitude, and which is cognizable within the meaning of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974); or

(b) the conviction under the Army Act, 1950 (Central Act 46 of 1950) of a registered nursing personnel, subject to the military law, for an offence which is cognizable within the meaning of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974); or

(c) any conduct, which, in the opinion of the Council, is infamous in relation to the nursing profession, and particularly under, any Code of Ethics as may be prescribed by the Council in this behalf or by the Indian Nursing Council.

(2) If the name of any registered nursing personnel is also entered by any other authority in the register or the list, maintained under any other law and it is removed from the said register or the said list, the Council shall, if such removal comes or brought to its notice, also remove the name of such registered nursing personnel from the register or the list maintained under this Act.

(3) It shall be the duty of the Registrar to intimate the public and the Indian Nursing Council of such removal.

(4) The Council may, on sufficient cause being shown, direct at any subsequent date that the name of a nursing personnel removed under sub-section (1) shall be re-entered in the register or list on such conditions and on payment of such fee, as may be prescribed.

(5) Any person aggrieved by any order of the Council made under this section may, within three months from the date on which the order is communicated to him/her, may appeal against such order to the Government.

The order of the Government on such appeal shall be final.

(6) The Council may, of its own motion, or on the application of any person, after due and proper inquiry and after giving an opportunity to the person concerned of being heard, cancel or alter any entry in the register, or the list if in the opinion of the Council, such entry was fraudulently or incorrectly made.

(7) In holding any inquiry under this section, the Council or the Executive Committee, as the case may be, shall have the same powers as are vested in Civil Courts under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), when trying a suit, in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents;

(c) issuing of commissions for the examination of witnesses.

(8) All inquiries under this section shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860).

(9) (a) For the purpose of advising the Council or the Executive Committee, as the case may be, on any question of law arising in any inquiry under this section, there may in all such inquiries be an assessor, who has been not less than ten years,—

(i) an advocate enrolled under the Advocates Act, 1961 (Central Act 25 of 1961) as in force; or

(ii) an attorney of a High Court.

(b) Where an assessor advises the Council or the Executive Committee on any question of law as to evidence, procedure or any other matter, he shall do so in the presence of every party or person representing a party, to the inquiry who appears thereat or if the advice is tendered after the Council or the Executive

Committee has begun to deliberate as to its findings, every such party or person as aforesaid shall be informed as to what advice the assessor has tendered. Such party or person shall also be informed if in any case the Council or the Executive Committee does not accept the advice of the assessor on any such questions as aforesaid.

(c) Any assessor under this section may be appointed either generally, or for any particular inquiry or class of inquiries, and shall be paid the remuneration as prescribed.

25. *Publication of Register and List.*— After every three years, the Registrar shall cause to be printed and published a correct list of all nursing personnel for the time being entered in the register.

(2) The Registrar shall cause to be printed or published annually on or before a date to be decided by the Executive Committee, an addendum and/or a corrigendum to the list published under sub-section (1), showing,—

(a) the names of all nursing personnel for the time being entered in the register and not included in any subsisting list already printed and published;

(b) the names of all nursing personnel included in any subsisting list, whose names have since been removed on account of any reason whatsoever from, and not re-entered in, the register; and

(c) any other amendments to the subsisting list.

(3) The form of the list published under sub-section (1), the particulars to be included therein, and the manner of its publication, shall be such as may be prescribed.

(4) A copy of the list referred to in sub-section (1) shall be evidence in all Courts, and in all judicial or quasi-judicial proceedings, that the persons whose names specified therein are registered according to

the provisions of this Act, and the absence of the name of any person from such copy shall be evidence, until the contrary is proved, that such person is not registered according to the provisions of this Act:

Provided that, in the case of any person whose name does not appear in such copy, a certified copy under the hand of the Registrar of the entry of the name of such person on the register shall be evidence that such person is registered under the provisions of this Act.

26. *Rights of registered nursing personnel.*— Notwithstanding anything contained in any law for the time being in force, the expression “legally qualified nurse, auxiliary nurse-midwife, multipurpose health worker, health visitor” or any word imparting a person recognized by a law as a registered member of the nursing profession shall, in all Acts of the State Legislature and in all Central Acts (in their application to the State of Goa) in so far as such Acts relate to any matters specified in List II or List III in the Seventh Schedule to the Constitution of India, include a nursing personnel, whose name is entered in the register under this Act.

27. *Appeals.*— (1) Any person aggrieved by any decision of the Registrar under this Act may, within the period of one month from the date on which the decision is communicated to him, appeal to the Council, which shall hear and determine the appeal in the prescribed manner.

(2) Save as otherwise provided in the Indian Nursing Council Act, 1947 (XLVIII of 1947), every decision of the Council under this Act shall be final.

28. *Act in addition and not in derogation.*— The provisions of this Act are in addition to, and not in derogation of, the provisions of the Indian Nursing Council Act, 1947 (XVIII of 1947).

CHAPTER IV

Nursing personnel entitled to practice and control of Licensing Authorities

29. *Persons not registered or not on the List not to practice as a nursing personnel.*—

(1) No person other than a person registered under this Act or a person whose name is entered in the List shall practice or hold himself out, whether directly or by implication, as practicing habitually or for personal gain, as a nursing personnel.

(2) Any person who acts in contravention of the provisions of sub-section (1) shall, on conviction, be punished with fine which may extend to ten thousand rupees for the first offence and to thirty thousand rupees for any subsequent offence.

30. *Licensing authority.*— The Government may, by notification in the Official Gazette, appoint licensing authority to issue licences for establishing nursing establishments.

31. *Licensing authority to exercise power of general supervision.*— Subject to the provisions of this Act and the rules and regulations made thereunder, every licensing authority shall exercise power of general supervision and control over all nursing personnel practicing within the State of Goa.

32. *Notice to Licensing Authority before commencement of practice.*— (1) Every person registered under this Act, and every person whose name has been entered in the List, if he intends to continue to practice, after the date on which this Act comes into force, in the State, he shall give notice in writing to the Licensing Authority.

(2) Every such notice shall contain such particulars and shall be in such form as may be prescribed.

(3) Any person who fails to comply with the provisions of sub-section (1) shall, on conviction, be punished with fine which may extend to one thousand rupees for the first offence and to three thousand rupees for any subsequent offence.

(4) Any person who knowingly or willfully makes or causes or procures any other person to make any false statement in any notice under this section shall, on conviction, be punished with fine which may extend to ten thousand rupees for the first offence, and to thirty thousand rupees for any subsequent offence.

CHAPTER V

Recognition of Training Institutions and Affiliation of Institutions

33. *Recognition of training institutions.*—

(1) The Council shall by its regulations specify examinations to be held by it, the qualifications for admission to such examinations, the courses of studies for such examinations, the standard of passing, the certificates or any other like awards to be given to persons who pass the examinations, and such other matters in respect of recognition of such examinations as may be necessary or expedient.

(2) The Council may, in accordance with the regulations made by it in this behalf and after inspection by its representatives and holding such inquiry as it deems fit, recognize any institution for training nursing personnel for the examinations of the Council.

(3) The Council may withdraw recognition from any such institution after its inspection by representatives of the Council. The order of such withdrawal shall be in writing and shall be served in the manner as laid down by regulations.

(4) Any person aggrieved by the order of the Council under this section may, within three months from the date on which such order is communicated to him, appeal against such order to the Government. The decision of the Government on any such appeal shall be final. The Government may direct the Council to re-inspect the institution or may uphold the decision of the Council.

(5) No college, hospital or other institution which is not recognized under this section

shall issue to any person a certificate or enter the name of any person in any document purporting to show that such person is qualified by reason of his having passed any examination or undergone any course or training to practice as a nursing personnel.

(6) Any person who contravenes the provisions of sub-section (5) shall, on conviction, be punished with fine which may extend to fifty thousand rupees.

34. *Affiliation of institutions.*— The Council may, in accordance with regulations made by it in this behalf and after inspection by its representatives and holding such inquiry as it deems fit, affiliate to it any nursing training institution for the purpose of training of nursing personnel.

CHAPTER VI

Nursing Establishments

35. *Regulation of nursing establishments.*—

(1) No person shall carry on any nursing establishment, except under a valid license granted by the licensing authority and in accordance with the terms and conditions specified in such license, which shall be such as may be approved by the Council.

(2) Any person who desires to carry on any nursing establishment shall apply to the licensing authority for a license in such manner, alongwith such fee and in such form as may be prescribed. He shall along with the application pay to the licensing authority the prescribed fee, half of which shall be refunded to him if the license is refused. Any nursing establishment already existing on the date of commencement of the Goa Nursing Council Act, 2012, shall apply to the licensing authority for a license within three months from the date of commencement of this Act.

(3) The licensing authority may, before granting license, impose such additional conditions as it may think fit for securing the proper conduct of the establishment.

(4) The licensing authority may, after giving an opportunity to the person concerned of being heard, refuse to grant any license or revoke any license already granted, if—

(a) the applicant or the holder of the license is under twenty-one years, or is in its opinion not a suitable person to hold such license; or

(b) the premises of the establishment are not suitable; or

(c) any offence under this section has been committed in respect of the establishment.

(5) Any person aggrieved by any of the conditions imposed by the licensing authority or by the refusal or revocation of any license under this section may appeal within three months of such imposition, refusal or revocation to the Government. Such fee as may be prescribed shall accompany the memorandum of appeal. The decision of the Government on such appeal shall be final.

(6) The licensing authority may authorize any other officer to perform any of the duties conferred on it by this section.

(7) Any officer duly authorized by the licensing authority in this behalf may at all reasonable times enter the premises specified in any license or application for license or any premises which is used or which the officer has reasonable cause to believe is used, for the purpose of, or in connection with, the nursing establishment and inspect the premises and any records relating to such establishment as may be kept thereon.

(8) The Council may also exercise the powers of entry and inspection conferred by sub-section (7) through any of its officers authorized by it in this behalf. If the Council is of opinion that in any case the license be refused or revoked, it shall report the matter to the licensing authority. The licensing authority, if it agrees with the Council, refuse or revoke the license, and, if it does not agree with the Council, report the matter to the

Government. On receipt of such report the Government may, after making such inquiry as it deems fit, pass such order as it deems fit. The order of the Government in such matter shall be final.

(9) Any person who contravenes the provisions of sub-section (1) shall, on conviction, be punished with fine which may extend to ten thousand rupees for the first offence and for any subsequent offence with simple imprisonment for a term which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both.

(10) Any person who refuses any duly authorized officer of the licensing authority or any such officer of the Council to enter or inspect any premises or to inspect any records under sub-section (7) or (8), as the case may be, or obstructs such officer in the exercise of his aforesaid powers shall, on conviction, be punished with fine which may extend to two thousand rupees for the first offence and for any subsequent offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

(11) Any person who makes or causes to be made or knowingly allows to be made any entry in a record to be kept under this section, or provides information which he knows to be false for the purpose of obtaining a license under this section or for any other purpose of this Act, shall, on conviction, be punished with fine which may extend to ten thousand rupees for the first offence and for any subsequent offence with the imprisonment for a term which may extend to six months, or with fine which may extend to thirty thousand rupees, or with both.

CHAPTER VII

Miscellaneous

36. *Penalty for dishonest use of certificate.*—
Any person who,—

(a) dishonestly makes use of any certificate of registration or enlistment

issued under the provisions of this Act to him or any other person;

(b) procures or attempts to procure registration or enlistment under the provisions of this Act by making or producing, or causing to be made or produced, any false or fraudulent declaration, certificate or representation, whether in writing or otherwise; or

(c) willfully makes or causes to be made any false representation in any matter relating to the register or the List maintained or any certificate issued under the provisions of this Act, shall, on conviction, be punished,—

(i) for the first offence, with fine which may extend to two thousand rupees;

(ii) for any subsequent offence, with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

37. Penalty for unlawful assumption of title of registered or enlisted nursing personnel.—

Any person who, not being a registered or enlisted nursing personnel, takes or uses the name or title of registered or enlisted nursing personnel, or uses any name, title, description, prescribed uniform, object or sign-board with the intention that it may be believed, or with knowledge that it is likely to be believed that such person is registered or, as the case may be; an enlisted nursing personnel, shall, on conviction, be punished—

(a) for the first offence, with fine which may extend to five thousand rupees;

(b) for any subsequent offence, with simple imprisonment for a term which may extend to three months, or with fine which may extend to ten thousand rupees, or with both.

38. Offences by companies.— (1) If the person committing an offence under section 33 or 34 is a company, every person who at

the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under sections 33 or 34 has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section,—

(a) “company” means a body corporate and includes a partnership firm or other association of individuals; and

(b) “director” in relation to a company means a partner in the partnership firm.

39. Court competent to try offences under this Act.— No Court other than the Court of Judicial Magistrate of the First Class shall take cognizance of or try any offence under this Act.

40. Compounding of offence.— (1) Any offence punishable under this Act with fine only may, before the institution of the prosecution, be compounded by such person as may be authorized by the Government, on payment to that person, for the credit to the Government, of such sum as may be specified by that person not exceeding the maximum

amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-section (1), no proceeding shall be taken against the offender in respect of the offence so compounded.

41. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or under the rules or regulations made thereunder.

42. *Power to make rules.*— (1) The Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) under section 3(5), the time, place and manner of holding elections of members, the President and the Vice-President of the Council;

(b) under section 8(1), the manner of convening, holding and conducting meetings of the Council;

(c) under section 10(n), the other powers to be exercised and other duties and functions to be performed, by the Council;

(d) under section 11, the number of members of the Executive Committee, their term of office, the manner of filling casual vacancies, the procedure to be followed by them;

(e) under section 12, the qualifications which the Chairman of the Examination Board shall have, the term of office of members of the Board and the manner of filling casual vacancies, procedure to be followed and other duties and functions of the Board;

(f) under section 13, the fees and allowances to be paid to the President, Vice-President, members of the Council, Executive Committee and other Committees and the Chairman and members of the Examination Board;

(g) under section 15, qualifications, salary, allowances and other conditions of service of the Registrar, Deputy Registrar and the manner of keeping accounts and supervisory powers and other duties and functions of the Registrar;

(h) under section 17, the form of Register, parts into which it shall be divided and particulars it shall include, form of application fee to be paid, and form of certificate of registration;

(i) under section 18, the renewal fee for continuation of name on the Register, form of renewal slip and penal fee to be paid for failure to pay renewal fee in time;

(j) under section 19, the fee for recording change in name and for making entry regarding recognized higher qualification, in the Register or List and also fee for issuing duplicate certificate of registration or enlistment;

(k) under section 20, fee for entering the name of person in the register who is holding qualifications as specified therein;

(l) under section 22, the fee to be paid, the form of application for temporary registration and of certificate of such registration;

(m) under section 23(3), the form List, parts into which it shall be divided and other particulars it shall include, form of application, fee, and renewal fee to be paid and the form of certificate of enlistment;

(n) under section 24, the manner of holding inquiry and conditions and fee payable for re-entering the name in the Register and the List;

(o) under section 25, the form of list of all nursing personnel, particulars to be included therein and manner of its publication;

(p) under section 27, the manner of hearing and determining appeals by the Council;

(q) under section 32, the form of notice to be given to the Licensing Authority and the particulars which shall contain in such notice;

(r) under section 35, the form and the manner in which, the application for license to establish nursing establishment shall be made and the fee to be accompanied with such application and memorandum of appeal;

(s) any other matter which is to be or may be prescribed under this Act.

43. *Power to make regulations.*— (1) The Council may, with the previous sanction of the Government, by notification, make regulations consistent with the provisions of this Act or the rules made thereunder to carry out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing powers, such regulations may provide for,—

(a) the examinations to be held by it;

(b) the qualifications for admission to examinations and the courses of studies for the examinations;

(c) the standards of passing;

(d) the certificate or other awards to be conferred upon those who pass the examinations and manner of conferring such awards;

(e) the conditions of appointment of examiners, paper setters, moderators and other persons appointed and remuneration to be paid to them for the conduct of examinations and the fee to be charged in connection with the examinations;

(f) the conditions of affiliation of institutions;

(g) the conditions for recognition of institutions;

(h) the number of students to be admitted to recognized institutions;

(i) the language in which instructions shall be given in recognised institutions;

(j) the manner, in which the accounts of the Council shall be kept by the Registrar;

(k) the supervisory powers of the Registrar over the staff;

(l) the fee payable for the copies of the order of the Council or of the Registrar and for the supply of a copy of any entry from the Register or List;

(m) the dress code for nursing personnel.

(3) The Government on receiving the draft regulations may sanction or refuse to sanction the same, or sanction subject to such modifications as it may think fit, or return them to the Council for further consideration.

(4) All regulations, when sanctioned, shall be published in the Official Gazette by the Government.

44. *Control of Government.*— (1) If at any time it appears to the Government that the Council or its President or Vice-President has failed to exercise, or has exceeded or abused any of the powers conferred upon it or him by or under this Act, or has ceased to function, or has become incapable of functioning, the Government may, if it considers such failure, excess, abuse or incapacity to be of a serious character, notify the particulars thereof to the Council or the President or the Vice-President, as the case may be. If the Council or the President or the Vice-President fails to remedy such failure, excess, abuse or incapacity within such reasonable time as the Government may fix in this behalf, the Government may remove the President or the Vice-President or dissolve the Council, as the case may be, and in case of dissolution of the Council, cause all or any of the powers, duties and functions of the Council to be exercised, performed and discharged by an administrator or any person of eminence as may be appointed by the Government, for

such period as may be decided by the Government not exceeding two years, and shall take steps to constitute, a new Council.

45. *Removal of difficulties.*— If any difficulty arises in giving effect to the provisions of this Act, the Government may, by general or special order published by notification in the Official Gazette, make such provisions consistent with the provisions of this Act as appear to it to be necessary or expedient for the purposes of removing difficulty:

Provided that no such order shall be made after the expiration of two years from the commencement of this Act.

Statement of Objects and Reasons

The Bill seeks to regulate and control registration of nurses, auxiliary nurse midwives, multipurpose health workers and health visitors practicing in Goa; to give recognition to training institutions; to grant affiliation and withdraw recognition; to conduct examinations; and for that purpose to constitute the Goa Nursing Council and the matters connected therewith and incidental thereto.

Financial Memorandum

Under the Bill, the duties which are to be performed by the State Nursing Council, requires appointment of the required staff. There would be financial implications involved for creation of infrastructure, salaries, recurring/non-recurring expenditure, besides grant-in-aid to be granted, however, the exact amount cannot be quantified at this stage.

Memorandum Regarding Delegated Legislation

Clause 1(3) of the Bill empowers the Government to issue notification for appointing a date to bring into force the Act.

Clause 3(1) of the Bill empowers the Government to constitute the Goa Nursing Council by issuing notification in the Official Gazette.

Clause 3(5) of the Bill empowers the Government to make rules for specifying the time, place and manner in which the election of members and of the President and the Vice-President of the Council shall be held.

Clause 8(1) of the Bill empowers the Government to frame rules for providing the manner of convening, holding and conducting meetings of the Council.

Clause 10(n) of the Bill empowers the Government to frame rules for providing other powers to be exercised and other duties and functions to be performed, by the Council.

Clause 11 of the Bill empowers the Government to frame rules for specifying the number of members of the Executive Committee, their term of office, the manner of filling casual vacancies and the procedure to be followed by them.

Clause 12 of the Bill empowers the Government to frame rules for providing the qualifications which the Chairman of the Examination Board shall have, the term of office of the members of the Examination Board, the manner of filling casual vacancies, procedure to be followed and other duties and functions of the Examination Board.

Clause 13 of the Bill empowers the Government to frame rules for providing the fees and allowances to be paid to the President, Vice-President, members of the Council, Executive Committee and other Committees and the Chairman and members of the Examination Board.

Clause 15 of the Bill empowers the Government to frame rules for providing the qualification, salary, allowances and other conditions of service of the Registrar and Deputy Registrar and the manner of keeping accounts and supervisory powers and other duties and functions of the Registrar.

Clause 17 of the Bill empowers the Government to frame rules for providing the

form of Register, parts into which it shall be divided and particulars it shall include, form of application, fee to be paid, and form of certificate of registration.

Clause 18 of the Bill empowers the Government to frame rules for providing the renewal fee for continuation of name on the Register, form of renewal slip and penal fee to be paid for failure to pay renewal fee in time.

Clause 19 of the Bill empowers the Government to frame rules for providing the fee for recording change in name and for making entry regarding recognized higher qualification, in the Register and also fee for issuing duplicate certificate of registration.

Clause 20 of the Bill empowers the Government to frame rules for providing fee for entering the name of the person in the register who is holding qualifications as specified therein.

Clause 22 of the Bill empowers the Government to frame rules for providing the fee to be paid and the form of application for temporary registration and of certificate of such registration.

Clause 23(3) of the Bill empowers the Government to frame rules for providing the form of the List, parts into which it shall be divided and other particulars it shall include, form of application, fee and renewal fee to be paid and the form of certificate of enlistment.

Clause 24 of the Bill empowers the Government to frame rules for providing the manner of holding inquiry and conditions and fee payable for re-entering the name in the Register and the List.

Clause 25 of the Bill empowers the Government to frame rules for providing the form of list of all nursing personnel, particulars to be included therein and the manner of its publication.

Clause 27 of the Bill empowers the Government to frame rules for providing the manner of hearing and determining the appeals by the Council.

Clause 30 of the Bill empowers the Government to appoint the Licensing Authority, by notification, for issuing licences for establishing nursing establishment.

Clause 32 of the Bill empowers the Government to frame rules for providing the form of notice to be given to the Licensing Authority and the particulars which shall contain in such notice.

Clause 35 of the Bill empowers the Government to frame rules for providing the form and the manner in which, the application for license to establish nursing establishment shall be made and the fee to be accompanied with such application and Memorandum of appeal.

Clause 42 of the Bill empowers the Government to frame rules for carrying out the purposes of the Act.

Clause 43 of the Bill empowers the Council to frame regulations under the Act.

Clause 45 of the Bill empowers the Government to issue order for removing any difficulty.

These delegations are of normal character.

Porvorim-Goa. LAXMIKANT Y. PARSEKAR
2nd August, 2012. Minister for Health

Assembly Hall, N. B. SUBHEDAR
Porvorim-Goa. Secretary to the Legislative
2nd August, 2012. Assembly of Goa

Governor's Recommendation under Article 207 of the Constitution of India

In pursuance of Article 207 of the Constitution of India, I Bharat Vir Wanchoo, Governor of Goa, hereby recommend to the Legislative Assembly of Goa, the introduction and consideration of the Goa Nursing Council Bill, 2012 (Bill No. 28 of 2012).

LA/LEGN/2012/1338

The following bill which was introduced in the Legislative Assembly of the State of Goa on 7th August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Salary, Allowances and Pension
of Members of the Legislative Assembly
(Fourth Amendment) Bill, 2012

(Bill No. 29 of 2012)

A
BILL

further to amend the Goa Salary, Allowances and Pension of Members of the Legislative Assembly Act, 2004 (Goa Act 20 of 2004).

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:

1. *Short title and commencement.*— (1) This Act may be called the Goa Salary, Allowances and Pension of Members of the Legislative Assembly (Fourth Amendment) Act, 2012.

(2) It shall come into force at once.

2. *Amendment of section 3.*— In section 3 of the Goa Salary, Allowances and Pension of Members of the Legislative Assembly Act, 2004 (Goa Act 20 of 2004) (hereinafter referred to as the “principal Act”),—

(i) in sub-section (1), for the expression “five thousand rupees” and “one thousand rupees”, the expression “ten thousand rupees” and “two thousand rupees” shall be respectively substituted;

(ii) in sub-section (2), for the expression “Rs.750/- (Rupees seven hundred and fifty only)”, the expression “Rs.1,500/- (Rupees one thousand and five hundred only)” shall be substituted.

3. *Amendment of section 5.*— In section 5 of the principal Act, in sub-section (1), for

the expression “Rs. 6 lakhs”, wherever it occurs, the expression “rupees fifteen lakhs” shall be substituted.

4. *Amendment of section 9.*— In section 9 of the principal Act, for the expression “fifty five thousand rupees”, the expression “ninety thousand rupees” shall be substituted.

5. *Amendment of section 11.*— In section 11 of the principal Act, in sub-section (1),—

(i) for the expression “rupees eight thousand”, the expression “rupees fifteen thousand” shall be substituted;

(ii) for the expression “one thousand and two hundred fifty rupees”, the expression “two thousand rupees” shall be substituted;

(iii) for the expression “rupees fifty thousand”, the expression “rupees seventy thousand” shall be substituted.

6. *Amendment of section 14.*— In section 14 of the principal Act, in sub-section (1),—

(i) for the expression “being such as would be admissible”, the expression “shall be the maximum amount which would be admissible” shall be substituted;

(ii) the following proviso shall be inserted, namely:—

“Provided that a member shall also be entitled to travelling allowance, at the rate aforesaid for journey made by him for the purpose other than aforesaid, from his usual place of residence to Delhi or any other place within India and for the return journey from such place to his usual place of residence, not more than twice a year.”;

(iii) in sub-section (3), for the expression “Rs. 2,500/-”, the expression “Rs. 6,000/-” shall be substituted.

7. *Amendment of section 15.*— In section 15 of the principal Act, for the expression “two hundred and fifty litres”, the expression “three hundred litres” shall be substituted.

8. *Substitution of section 19.*— For section 19 of the principal Act, the following section shall be substituted, namely:—

“19. *Staff to Member.*— A member may appoint not more than five persons, viz, one person as a Personal Secretary in the pay scale of Head Clerk and one Lower Division Clerk, one Peon and two Drivers, all carrying the same pay scales as attached to the equivalent posts in the Government. The member may recruit the above staff from the employees who are in service of the Government or the Government Corporations, on deputation, or from outside, whose term shall be co-terminus with the term of a member.”.

Statement of Objects and Reasons

As there is inflation and the cost of living in the State of Goa is higher as compared to the neighbouring States, it is proposed to amend section 3 of the Goa Salary, Allowances and Pension of Members of the Legislative Assembly Act, 2004 (Act 20 of 2004) (hereinafter referred to as the “said Act”), so as to increase the salary entitled to a member from five thousand rupees to ten thousand rupees and the daily allowance during his period on duty from one thousand rupees to two thousand rupees. Further, the amount of seven hundred fifty rupees payable to a member on duty in lieu of the accommodation provided to him is increased to one thousand five hundred rupees. Also, it is proposed to amend section 11 of the said Act, so as to increase the pension payable to a member for the first year from eight thousand rupees to fifteen thousand rupees and every successive year of his membership from one thousand and two hundred fifty rupees to two thousand, subject to a maximum of seventy thousand rupees.

As the cost of a good vehicle is considerably increased, it is proposed to also increase repayable motor car allowance admissible to a member under section 5 of the said Act from six lakhs rupees to fifteen lakhs rupees, by amending section 5 of the said Act.

As a member has to move throughout in his constituency to ensure its overall development and to meet his constituency people, it is proposed to increase the constituency allowance payable under section 9 of the said Act from fifty five thousand rupees to ninety thousand rupees, by amending section 9 of the said Act, so as to meet his travelling expenses thereof.

It is also proposed to amend section 14 of the said Act, so as to allow a member to draw travelling allowance at the maximum amount which would be admissible in respect of journeys on tour to a Group ‘A’ officer of the Central Government, when attending to any official business connected with his duty as a member outside the State. Further it is also proposed to entitle him a travelling allowance at the rate of maximum amount admissible in respect of journey on tour to Group ‘A’ officials, made either by air or railways, from his usual place of residence to Delhi or any other place in India and for return journey not more than twice a year. It is also proposed to increase the daily amount admissible to a member while travelling outside the State either in capacity of committee member or in any other official capacity from two thousand five hundred rupees per day to six thousand rupees per day, in lieu of accommodation/stay during travels.

The Bill also seeks to amend section 15 of the said Act, so as to increase the quota of a petrol/diesel admissible to a member per month for the use of his personal vehicle from 250 litres to 300 litres.

The Bill also seeks to amend section 19 of the said Act, so as to enable a member to appoint not more than five persons, viz, one Personal Secretary in the pay scale of Head Clerk, one Lower Division Clerk, two drivers and one peon all carrying the same pay scales as attached to the equivalent posts in the Government. A member may take the services of existing employees of the

Government on deputation or may engage outside persons whose term will be co-terminus with the term of a member.

This Bill seeks to achieve the above objects.

Financial Memorandum

The total financial implications on account of the amendment to sections 3, 5, 9, 11, 14, 15, and 19 proposed in the Bill, would be to the tune of Rs. Six crores, per annum.

Memorandum Regarding Delegated Legislation

No delegated legislation is involved in this Bill.

Porvorim-Goa, MANOHAR PARRIKAR
6th August, 2012. Chief Minister/Minister for Law,
Judiciary and Legislative Affairs

Assembly Hall, N. B. SUBHEDAR
Porvorim-Goa, Secretary to the
6th August, 2012. Legislative Assembly of Goa

Governor's Recommendation under Article 207 of the Constitution of India

In pursuance of Article 207 of the Constitution of India, I, Bharat Vir Wanchoo, Governor of Goa, hereby recommend the introduction and consideration of the Goa Salary, Allowances and Pension of Members of the Legislative Assembly (Fourth Amendment) Bill, 2012, by the Legislative Assembly of Goa.

ANNEXURE

Extract of sections 3, 5, 9, 11, 14, 15 and 19 of the Goa Salary, Allowances and Pension of the Members of the Legislative Assembly Act, 2004
(Act No. 20 of 2004)

3. *Salaries and daily allowances.*— (1) A member shall be entitled to receive salary at the rate of five thousand rupees per month during his term of office

and shall also be entitled to receive daily allowances at the rate of one thousand rupees for each day during any period on duty.

Explanation.— Daily allowance shall be admissible to a member for each day on duty irrespective of the time of his arrival or departure.

(2) A member shall be entitled for an amount of Rs. 750/- (Rupees Seven hundred and fifty only), for each day on duty in lieu of the accommodation provided under section 13.

5. *Motor car advance.*— (1) Subject to other provisions of this Act and to such conditions as may be prescribed, a Member may be sanctioned, by way of repayable advance, an amount of Rs. 6 lakhs for purchase of new motor car at such installments and interest fixed under the rules:

Provided that a member can avail of the maximum amount of advance of Rs. 6 lakhs and use the same, in part for the purpose of purchase of new motor car and in part for the repayment of outstanding amount of any advance or loan earlier availed of by a member for purchase of motor car either under this Act or any other law or rules made thereunder.

(2) The advance referred to in sub-section (1) may be availed of by a member once every three years provided the member has fully cleared any advance earlier availed under sub-section (1) and if such earlier advance has not been fully cleared, then, the member may be sanctioned a second advance only to the extent of the differential in the amount specified under sub-section (1).

(3) A motor car purchased under sub-section (1) shall be hypothecated to the Government and also insured, in the manner prescribed.

(4) A member may be allowed to sell the motor car purchased under sub-section (1) only for the purpose of repaying the entire amount of advance granted under sub-section (1), with the permission, of the sanctioning authority.

(5) Notwithstanding anything contained in sub-section (1), any advance or loan availed of by a member for purchase of motor car under the provision of any other law or rules made thereunder shall continue to be governed by the provision of such other law or rules.

9. *Constituency allowance.*— Notwithstanding anything contained in any other law for the time being in force, there shall be paid to each member

a constituency allowance at the rate of fifty five thousand rupees per every calendar month or a part thereof, during the term of the Assembly.

11. *Pension.*— (1) Subject to the other provisions of this Act, with effect from the 1st day of July, 2004, there shall be paid to every person who has been a member, a pension of rupees eight thousand per mensem for the first year and one thousand and two hundred fifty rupees per month for every successive year of his membership in the Assembly subject to a maximum of rupees fifty thousand per month and while reckoning the period of one year, days exceeding 180 days in a calendar year shall be counted as one year:

Provided that the members of the First Legislative Assembly, the members nominated to the Second Legislative Assembly and the members of the Sixth Legislative Assembly elected from the constituencies of Daman and Diu, of the then Union Territory of Goa, Daman and Diu, and who have served as such members for a period which falls short of five years, shall be deemed to have completed a term of five years and be paid pension accordingly:

Provided further that pension shall also be paid to the members nominated to the Sixth Legislative Assembly:

Provided also that the said members of the Sixth Legislative Assembly elected from the constituencies of Daman and Diu shall not draw the pension as long as they serve as Councillors of the Union Territory of Daman and Diu:

Provided also that after the death of the person as aforesaid, the pension shall be payable to his widow or her widower, as the case may be, as long as she or he does not remarry and after the death of the widow or widower, as the case may be, the pension shall be payable to the dependent family members of the person as aforesaid till they attain the age of 25 years and to unmarried dependent daughter till she gets married or till her death, whichever is earlier, and such pension shall be payable subject to the provisions in the succeeding sub-sections of this section and the other provisions of this Act.

(2) The pension payable to a person under sub-section (1), in case there be any outstanding amount or loan or any facilities availed under this Act, it shall be first adjusted towards repayment of such outstanding amount or loan or any facility

availed of, including interest payable thereon, till such entire outstanding amount or loan or facility is cleared.

(3) Where any person entitled to pension under sub-section (1)–

(i) is elected to the office of the President or Vice-President or is appointed to the office of the Governor of any State or the Administrator of any Union Territory; or

(ii) becomes a member of the Council of States or the House of the People or any Legislative Assembly of a State or Union Territory or any Legislative Council of a State; or

(iii) is employed on a salary under Central Government, or any State Government or any Corporation owned or controlled by the Central Government or by any State Government or any local authority or becomes otherwise entitled to any remuneration from such Government, Corporation or local authority, such person shall not be entitled to any pension under sub-section (1) for the period during which he continues to hold such office or as such member, or is so employed, or continues to be entitled to such remuneration:

Provided that where the salary payable to such person for holding such office or being such member or so employed or whom the remuneration referred to in clause (iii) payable to such person is, in either case, less than the pension payable to him under sub-section (1), such person shall be entitled only to receive the balance as pension under that sub-section.

(4) Where any person entitled to pension under sub-section (1) is also entitled to any pension from the Central Government or any State Government, or any Corporation owned or controlled by the Central Government or any State Government, or any local authority under any law or otherwise, then,

(a) where the amount of pension to which he is entitled under such law or otherwise, is equal to or in excess of that to which he is entitled under sub-section (1), such person shall not be entitled to any pension under that sub-section; and

(b) where the amount of pension to which he is entitled under such law or otherwise, is less

than that to which he is entitled under sub-section (1), such person shall be entitled to pension under that sub-section only of an amount which falls short of the amount of pension to which he is otherwise entitled under that sub-section:

Provided that any pension (whether known as Swantantra Sainik Samman pension or by any other name) received by such pensioner as a freedom fighter or any pension received by such pensioner as a teacher in an aided educational institution shall not be taken into account for the purpose of this sub-section and such person shall be entitled to receive such pension in addition to the pension to which he is entitled under sub-section (1).

(5) In computing the number of years for the purpose of sub-section (1) the period during which a person has served as a Minister as defined in the Goa Salaries and Allowances of Ministers Act, 1964 (Act 3 of 1965) or as a Speaker or Deputy Speaker as defined in the Goa Salaries and Allowances of the Speaker and Deputy Speaker Act, 1964 (Act 4 of 1965) shall also be taken into account.

14. *Travelling allowance.*— (1) In respect of every journey performed by a member for attending to any official business connected with his duties as a member outside the State, he shall be entitled to travelling allowance from his usual place of residence to such place where the business is to be transacted and for the return journey from such place to his usual place of residence, the amount of such allowance being such as would be admissible in respect of journeys on tour to a Group 'A' Officer of the Central Government serving in connection with the administration of the State of Goa and shall also be entitled to an advance of travelling allowance when proceeding on tour outside the State of Goa in connection with his duties as a member on the same terms and conditions as are applicable to the grant of an advance to the Group 'A' Officer aforesaid in connection with a tour.

(2) Notwithstanding anything contained in sub-section (1), a member who performs a journey by road or by air between places connected by rail, whether wholly or in part, may draw the road mileage in place of the travelling allowance which would have been admissible to him if he had travelled by rail or actual air fare for each journey undertaken, as the case may be:

Provided that the total amount of travelling allowance drawn by such member for the entire

journey shall not exceed the amount which would have been admissible to him, had he performed the journey by rail or actual, air fare with respect to journey undertaken, as the case may be.

(3) A member travelling outside the State, either in the capacity of committee member or in any other official capacity, shall be entitled for reimbursement of an amount to the extent of Rs. 2500/- per day in lieu of his/her accommodation/ stay during his/her travel as aforesaid.

15. *Petrol/diesel for personal vehicle.*— A member shall be entitled for a maximum of two hundred and fifty litres of petrol/diesel per month, for the use of his personal vehicle, the cost of which shall be borne by the Legislature Secretariat, in the manner prescribed.

19. *Personal assistants.*— Subject to the provisions of the rules made in this behalf, a member may appoint not more than four persons possessing such qualifications and on such terms and conditions as may be prescribed, as his personal assistants and the total remuneration payable to all such personal assistants shall not exceed Rs. 32,000/- (Rupees Thirty two thousand only) per month:

Provided that in case a member engages the services of a serving Government employee as his personal assistant then the total remuneration of Rs. 32,000/- (Rupees Thirty two thousand only) shall be reduced by an amount equivalent to the basic salary drawn by such Government employee at the time of his engagement as personal assistant.

Assembly Hall, N. B. SUBHEDAR
Porvorim-Goa, Secretary to the
6th August, 2012. Legislative Assembly of Goa

LA/LEGN/2012/1339

The following bill which was introduced in the Legislative Assembly of the State of Goa on 7th August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Salaries and Allowances of Ministers (Amendment) Bill, 2012

(Bill No. 30 of 2012)

A

BILL

further to amend the Goa Salaries and Allowances of Ministers Act, 1964 (Act 3 of 1965).

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa Salaries and Allowances of Ministers (Amendment) Bill, 2012.

(2) It shall come into force at once.

2. *Substitution of section 3.*— For section 3 of the Goa Salaries and Allowances of Ministers Act, 1964 (Act 3 of 1965) (hereinafter referred to as the “principal Act”), the following section shall be substituted, namely:—

“3. *Salary and Sumptuary Allowances.*—

(1) There shall be paid to each Minister a monthly salary as laid down below, namely:—

1. Chief Minister	Rs. 20,000/-.
2. Deputy Chief Minister	Rs. 19,000/-.
3. Minister	Rs. 18,000/-.
4. Minister of State/Deputy Minister	Rs. 17,000/-.

(2) Every Minister shall also be entitled to a monthly sumptuary allowance as laid down below, namely:—

1. Chief Minister	Rs. 25,000/-.
2. Deputy Chief Minister	Rs. 20,000/-.
3. Minister	Rs. 15,000/-.
4. Minister of State/Deputy Minister	Rs. 10,000/-.

3. *Amendment of section 4.*— In section 4 of the principal Act, for the words “ten thousand rupees”, the words “twenty thousand rupees” shall be substituted.

Statement of Objects and Reasons

The Bill seeks to amend sections 3 and 4 of the Goa Salaries and Allowances of Ministers Act, 1964 (Act No. 3 of 1965), so as to enhance the monthly salary, sumptuary allowance and compensatory allowance of the Ministers by taking into consideration the price index and living standard, which have been considerably increased.

This Bill seeks to achieve the above objects.

Financial Memorandum

The additional financial liability on account of the proposed increase in monthly salary, sumptuary allowance and compensatory allowance of the Ministers would be to the extent of Rs. 45.36 lakhs per annum approximately.

Memorandum Regarding Delegated Legislation

No delegated Legislation is involved in this Bill.

Porvorim-Goa.
6th August, 2012.

MANOHAR PARRIKAR
Chief Minister

Assembly Hall,
Porvorim-Goa.
6th August, 2012.

N. B. SUBHEDAR
Secretary to the
Legislative Assembly of Goa

Governor's Recommendation under Article 207 of the Constitution

In pursuance of Article 207 of the Constitution of India, I, Bharat Vir Wanchoo, Governor of Goa, hereby recommend the introduction and the consideration of the Goa Salaries and Allowances of Ministers (Amendment) Bill, 2012, by the Legislative Assembly of Goa.

BHARAT VIR WANCHOO
Governor of Goa

ANNEXURE

LA/LEGN/2012/1340

Extract of the Goa Salaries and Allowances of Ministers Act, 1964 (Act 3 of 1965)**Section 3**

3. *Salary and Sumptuary Allowances.*— (1) There shall be paid to each Minister a monthly salary as laid down below, namely:—

- | | |
|---|-------------|
| 1. Chief Minister..... | Rs. 8,000/- |
| 2. Deputy Chief Minister..... | Rs. 7,000/- |
| 3. Minister..... | Rs. 6,000/- |
| 4. Minister of State/Deputy Minister..... | Rs. 5,000/- |

(2) Every Minister shall also be entitled to a monthly sumptuary allowance as laid down below, namely:—

- | | |
|---|--------------|
| 1. Chief Minister..... | Rs. 15,000/- |
| 2. Deputy Chief Minister..... | Rs. 9,500/- |
| 3. Minister..... | Rs. 9,000/- |
| 4. Minister of State/Deputy Minister..... | Rs. 5,000/- |

Section 4

4. *Residence of Ministers.*— Each Minister shall be entitled, without any payment, to the use and maintenance of a furnished residence throughout his term of office and for a period of fifteen days immediately thereafter, and so long as such residence is not provided, to a compensatory allowance of ten thousand rupees per month and in addition, shall also be entitled, for the purpose of payment to a sum equal to the actual charges of electricity and water in respect of his private residence:

Provided that the Chief Minister shall not be entitled to the compensatory allowance as aforesaid.

Explanation.— For the purpose of this section,—

(i) 'residence' includes the staff quarters and other buildings appurtenant thereto and the garden thereto as is exclusively set apart for use as office at the residence and is used as such;

(ii) 'maintenance' in relation to a residence includes payment of local rates and taxes and provision of electricity and water, which shall be paid by the Government.

Assembly Hall,
Porvorim-Goa.
6th August, 2012.

N. B. SUBHEDAR
Secretary to the
Legislative Assembly of Goa

The following bill which was introduced in the Legislative Assembly of the State of Goa on 7th August, 2012 is hereby published for general information in pursuance of Rule-138 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

The Goa Land Use (Regulation)
(Amendment) Bill, 2012

(Bill No. 25 of 2012)

A

BILL

to amend the Goa Land Use (Regulation) Act, 1991 (Goa Act 3 of 1991).

Be it enacted by the Legislative Assembly of Goa in the Sixty-third Year of the Republic of India, as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Goa Land Use (Regulation) (Amendment) Act, 2012.

(2) It shall come into force from the date of its publication in the Official Gazette.

2. *Amendment of section 2.*— In section 2 of the Goa Land Use (Regulation) Act, 1991 (Goa Act 3 of 1991) (hereinafter referred to as the "principal Act"), after the expression "the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964)" and before the expression "shall be used", the expression "or any land, purchased or in respect of which right of any kind is acquired, in execution of a decree of a Civil Court or of a Revenue Court, as the case may be, or any other land" shall be inserted.

3. *Insertion of new section 2A.*— After section 2 of the principal Act, the following new sections shall be inserted, namely:—

“2A. *Restriction on the owner of land.*—

(1) The owner of land as referred to in section 2 shall not transfer any such land either by way of sale, or gift, or exchange, or lease, in favour of any person, including foreigner, other than agriculturist.

(2) No owner of land as referred to in section 2 shall use or allow it to be used for any purpose other than agriculture.

Explanation:— For the purpose of this section, “Agriculturist” means a person who cultivates land personally in the State of Goa.

(3) Any transfer of land, in contravention of the provisions of sub-section (1) shall be deemed to be void and non-est in the eyes of law and shall not confer any right, title to, or interest in the transferee.

(4) If any question arises as to whether any land is an agricultural land or not, the Director of Agriculture, Government of Goa, shall after holding an inquiry, decide such question.

5. Notwithstanding anything contained in any other law or rules, regulations, bye-laws, schemes, framed thereunder, or any judgement, decree, writ, order or declaration of any court whatsoever, from the date of the commencement of the Goa Land Use (Regulation) (Amendment) Act, 2012, no administrative, statutory, public authority or any other authority under any law shall grant permission/no objection certificate/approval/clearance/sanad/conversion/sanction, to use the land as referred to in section 2 for any purpose other than agriculture.

Statement of Objects and Reasons

The agricultural land mass in the State of Goa is reducing day by day due to use of agricultural land for non-agricultural purposes. Many times without obtaining proper sanad from the statutory authority for such use.

In order to protect the existing agricultural land in the State of Goa, the Bill seeks to amend Section 2 of the Goa Land Use (Regulation) Act, 1991 (Goa Act 3 of 1991), so as to prohibit use of the agricultural land for any purpose other than agriculture.

The Bill further seeks to insert a new section 2A in the said Act so as to restrict the owner of an agricultural land from transferring such land in favour of any person, including foreigner, other than agriculturist.

This Bill seeks to achieve the above object.

Financial Memorandum

No Financial implications are involved in this Bill

Memorandum Regarding Delegated Legislation

No delegated legislation is involved in this Bill.

Porvorim-Goa, ADV. FRANCIS D'SOUZA
Date: 6th August, 2012. Minister for Revenue

Assembly Hall, N. B. SUBHEDAR
Porvorim-Goa, Secretary, Legislative
Date: 6th August, 2012.

ANNEXURE

Bill No. 25 of 2012

The Goa Land Use (Regulation) (Amendment) Bill, 2012

2. *Regulation of Use of Land.*— Notwithstanding anything contained in the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act 21 of 1975) or in any plan or scheme made thereunder or in the Goa Land Revenue Code, 1968 (Act 9 of 1969), no land which is vested in a tenant under the provision of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964) shall

be used or allowed to be used for any purpose other than agriculture.

3. *Exemption.*— The provisions of this Act shall not apply to acquisition of any land vested in a tenant under the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act 7 of 1964) by the State for a Public Purpose under the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894).

Assembly Hall,
Porvorim-Goa,

N. B. SUBHEDAR
Secretary, Legislative

Dated: 6th August, 2012.

◆◆◆

Department of Law & Judiciary

Law (Establishment) Division

—

Order

13/1/2012-LD(Estt).

Sanction of the Government is hereby conveyed for the creation of the following posts to the District and Sessions Court, North Goa, Panaji with immediate effect:—

Sr. No.	Designation of the post	Pay scale (in Rs.)	No. of posts proposed for creation
1.	Protocol Officer-cum-Superintendent	9300-34800+GP 4600	1
2.	Bench Clerk Grade-I to the District and Sessions Court	9300-34800+GP 4200	8
3.	Bench Clerk Grade-II to the Court of Civil Judge Sr. Div./C.J.M.	5200-20200+GP 2400	7
4.	Bench Clerk Grade-III to the Court of Civil Judge Jr. Div. & JMFC	5200-20200+1900 GP	11
5.	Jr. Clerk/L.D.C. to assist the Protocol Officer	5200-20200+1900 GP	1
Total			28

The expenditure to the above posts shall be debitable to the Budget Head 2014—Administration of Justice; 00; 105—Civil & Sessions Courts; 02—District and Sessions Judge (North Goa); 01—Salaries; North Goa, under Demand No. 03.

This is issued on the recommendation of Administrative Reforms Department vide their U. O. No. ARD/261/F dated 23-04-2012 and concurrence of Finance (Rev. & Cont.) Department vide their U. O. No. Fin (R & C)/1453249-F dated 25-05-2012.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Estt.).

Porvorim, 31st July, 2012.

Order

13/1/2012-LD(Estt).

Sanction of the Government is hereby conveyed for the creation of the following posts to the District and Sessions Court, South Goa, Margao with immediate effect:

Sr. No.	Designation of the post	Pay scale (in Rs.)	No. of posts proposed for creation
1.	Protocol Officer-cum-Superintendent	9300-34800+GP 4600	1
2.	Bench Clerk Grade-I to the District and Sessions Court	9300-34800+GP 4200	7
3.	Bench Clerk Grade-II to the Court of Civil Judge Sr. Div./C.J.M.	5200-20200+GP 2400	7
4.	Bench Clerk Grade-III to the Court of Civil Judge Jr. Div. & JMFC	5200-20200+GP 1900	9
5.	L.D.C. to assist the Protocol Officer	5200-20200+GP 1900	1
Total			25

The expenditure to the above posts shall be debitable to the Budget Head 2014—Administration of Justice; 00; 105—Civil & Sessions Courts; 02—District and Sessions Judge (South Goa), 01—Salaries (Non Plan), South Goa; under Demand No. 04.

This is issued on the recommendation of Administrative Reforms Department vide their U. O. No. ARD/261/F dated 23-04-2012 and concurrence of Finance (Rev. & Cont.) Department vide their U. O. No. Fin(R & C)/1453249-F dated 25-05-2012.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Estt).

Porvorim 31st July, 2012.



Department of Personnel

Notification

1/49/76-PER (Pt.II)

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Goa is hereby pleased to make the following amendment to the Recruitment Rules for Group 'C' and 'D' posts in various Departments under the Government of Goa, as follows:—

In the Schedule annexed to the Recruitment Rules for various Group 'C' and 'D' posts under the Government of Goa, the existing age limit in the column prescribed for direct recruitment shall be enhanced by two years.

The relaxation in age limit provided to Government servants and other categories of personnel wherever applicable shall be in addition to the above increase in age limit of two years.

This notification shall come into force from the date of its publication in the Official Gazette and shall remain in force for a period of two years from the date of its commencement.

By order and in the name of the
Governor of Goa.

Yetindra M. Maralkar, Additional Secretary
(Personnel).

Porvorim, 6th August, 2012.

◆◆◆
Department of Sports & Youth Affairs

Directorate of Sports & Youth Affairs

—
Order

2/07/(829)/11/DSYA/Adm/2176

Sanction of the Government is hereby accorded for creation of a post of an Accountant in the Directorate of Sports & Youth Affairs in the Pay Scale of Rs. 9,300/- 34,800 Grade Pay Rs. 4,200/- to be filled by a suitable Officer/Official from the Directorate of Accounts on transfer basis for effecting/monitoring day-to-day Accounts of the Account Section of this Directorate.

The expenditure shall be debited to the Budget Head Demand No. 42.

2204—Sports & Youth Services;
00—;
101—Physical Education;
04—Directorate of Sports (N. P);
01—Salaries.

This issues with the approval/concurrence of the ARD vide their U.O. No. 1104/F dated 5-07-2011 and Finance (Rev. & Cont.) vide their U. O. No. 1442951-F dated 4-8-2011.

By order and in the name of the
Governor of Goa.

V. M. Prabhu Desai, Director (Sports & Youth Affairs).

Panaji, 3rd August, 2012.

Department of Women & Child Development

Directorate of Women & Child Development

Notification

2/279/LL/2012/DW&CD/2969

Read: Notification No. 2/279/LL/2012/
/DW&CD/2562 dated 06-07-2012.

For removal of difficulties in the implementation of the Laadli Laxmi Scheme notified in the Official Gazette, Series I No. 16 dated 19-07-2012, in terms of powers conferred vide sub-clause (3) of Clause 6 of the Scheme, the Government hereby amends the said Scheme as hereunder:

1. In sub-clause (i) of Clause 4(1), the sentence/words "In no case shall the Certificate of Birth under delayed birth registration provisions be accepted and in such cases the matter will be referred to the Committee constituted for the purpose" shall be deleted and substituted by the following sentence/words:

"In cases of delayed birth registration certificate, the application will be referred to the Committee constituted for decision."

2. In sub-clause (ii) of Clause 4 (1), the sentence/words "The previous School Leaving Certificate and the current Bonafide Student Certificate issued by the recognised Educational Institution in which the Girl is presently studying, shall be considered in lieu of the Residence Certificate," shall be deleted and substituted by the following sentence/words:

"In lieu of the Residence Certificate, the previous School Leaving Certificate and the current Bonafide Student Certificate issued by the recognized Educational Institution in which the Girl is presently studying can also be produced. However, in case of girls who discontinued education at school level, the gap period i.e. from the time of discontinuation of education till completion

of 18 years of age/marriage as the case may be proved by production of residence certificate. In case of graduates, the Certificates of passing Xth, XIIth and Graduation is adequate evidence.”

3. In sub-clause (iii) of Clause 4(1), after the words “as the case may be.”, the following shall be added:

“In lieu of the Residence Certificate, any documentary evidence to prove the residence for the specified period can also be produced which may include:

(a) The land records i.e. tenancy rights, mundkarial rights, occupancy rights, etc.;

(b) Employment Certificate; or

(c) Any such records to the satisfaction of the Committee.”

4. In sub-clause (iv) of Clause 4(1), the sentence/words “In no case shall the Certificate of Birth under delayed birth registration provisions be accepted and in such cases the matter will be referred to the Committee constituted for the purpose.”, shall be deleted and substituted by the following sentence/words:

“In cases of delayed birth registration certificate, the application will be referred to the Committee constituted for decision.

If no birth certificate is available, one of the following documents can be produced showing the details namely, the date and place of birth of the parent(s):

(a) Baptism certificate;

(b) School leaving certificate of the parent(s);

(c) Any document which establishes that one of the grandparents of the girl have lived in Goa around the time of the date of birth claimed by the parent(s); or

(d) Any such records which establishes the date of birth of the parent(s).”

5. In Clause 4 below Note 2, the following shall be added:

“Note 3: The application form (Annexure-I) shall be signed by the applicant in the presence of either a Member of Legislative Assembly, Member of Parliament, Government Officer (not below the rank of Additional/Special Secretary to the Government of Goa) or the District Magistrate.”

By order and in the name of the Governor of Goa.

Sunil P. Masurkar, Director & ex officio Joint Secretary (Women and Child Development).

Panaji, 7th August, 2012.

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